NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

MILITARY LEGISLATION: EXPLAINING MILITARY OFFICERS' WRITING DEFICIENCIES

by

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June 2016

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REPORT DOCUMENTATION PAGE		*Form Approved OMB No. 0704–0188*
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC 20503.		
1. AGENCY USE ONLY *(Leave blank)*	**2. REPORT DATE** June 2016	**3. REPORT TYPE AND DATES COVERED** Master's thesis
4. TITLE AND SUBTITLE MILITARY LEGISLATION: EXPLAINING MILITARY OFFICERS' WRITING DEFICIENCIES		**5. FUNDING NUMBERS**
6. AUTHOR(S) Andrii Borysov		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000		**8. PERFORMING ORGANIZATION REPORT NUMBER**
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A		**10. SPONSORING / MONITORING AGENCY REPORT NUMBER**
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. IRB Protocol number ____N/A____.		
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited		**12b. DISTRIBUTION CODE**

13. ABSTRACT (maximum 200 words)

In performing jobs related to national security and defense, personnel must comply with rules and decisions communicated in the form of written legislation, which includes directives, memos, instructions, manuals, standard operating procedures, and reports. Incorrect understanding of legislative provisions may lead to disastrous consequences, making clear communication through these documents paramount. The vast majority of military officers write legislation using academic writing skills developed at military and civilian universities. However, academic writing skills do not enable officers to write legislative acts efficiently.

Using theories of learning and teaching, the thesis examines the reasons why an academic writing style, everyday military writing, and general writing are inappropriate for preparing officers to write legislation. It identifies the similarities and differences between academic and legislative writing to reveal the skills necessary for both. It then investigates if academic and everyday writing and reading can produce the knowledge required for legislative drafting. Concluding that they cannot, it then explores how multiple environments favor or impede officers in developing legislative drafting skills. It concludes that audience, academic norms, and other environments diminish legislative writing skills. Recommendations are offered for how to teach officers legislative drafting and organize the process of writing legislative documents at military units.

14. SUBJECT TERMS academic writing, legislative drafting, academic paper, legislative document, manual, writing skills			**15. NUMBER OF PAGES** 109
			16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	**18. SECURITY CLASSIFICATION OF THIS PAGE** Unclassified	**19. SECURITY CLASSIFICATION OF ABSTRACT** Unclassified	**20. LIMITATION OF ABSTRACT** UU

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MILITARY LEGISLATION: EXPLAINING MILITARY OFFICERS' WRITING DEFICIENCIES

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(STRATEGIC STUDIES)**

from the

**NAVAL POSTGRADUATE SCHOOL
June 2016**

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TABLE OF CONTENTS

LIST OF FIGURES

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ACKNOWLEDGMENTS

I would like to express my sincere thanks to Professors Carolyn Halladay and Sandra Leavitt, advisors of this project. Their methodological contribution to the research is difficult to overvalue. Each paragraph of the thesis has undergone their thorough scrutiny in terms of what and how I should do more to make the thesis logical, persuasive, and understandable for readers. Following their comments and recommendations, I have obtained the necessary knowledge and experience to undertake complex research projects like this one.

Familiar now with the main learning theories that lie beneath this research, I may confidently say—drawing on constructivism—that this knowledge and experience also has been in significant part created due to the other knowledge and experience I have gained while attending curricular courses. Accordingly, I would like to extend my gratefulness to all professors and instructors who, with outstanding professionalism and geniality, imparted to me their scholarly acquisitions.

I hope the knowledge and experience I have obtained will bring benefit to me, my country, Ukraine, and the world at large.

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I.   INTRODUCTION

In Ukraine, as in many states, officers of the armed forces graduate from various courses and degree programs that require them to achieve a certain standard of written work. And yet, many of these officers—like their counterparts in other European and Western states—find it difficult to convert their academic writing skills to the essential task of writing military legislation—instructions, regulations, rules, manuals, and the like—even though this activity forms a normal part of most military careers. Why are military officers not able to write legislative acts efficiently if they have skills in academic writing? How might educational institutions better prepare officers to write the kinds of legislation they are expected to master, in addition to preparing solid academic analysis and writing? And what other measures, perhaps in addition to an academic education, can military authorities take to improve officers' skills in writing legislative documents?

A.   SIGNIFICANCE OF THE RESEARCH QUESTION

Western society today enjoys the most progressive system of governance: liberal democracy. Key to maintaining this system, as Fareed Zakaria points out, is the rule of law.[1] However, implementing the rule of law is only possible if legislation is written clearly, completely, accurately, and accessibly. Some national constitutions expressly state that laws must be published. For example, according to Article 94 of the Ukrainian Constitution, "a law shall enter into force … [no] earlier than the date of publication of such law."[2] In the United States, the U.S. Code provides that "whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States."[3] New technologies do not

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[1] Fareed Zakaria, "A Brief History of Human Liberty," in *Essential Readings in Comparative Politics*, ed. Patrick H. O'Neil and Ronald Rogowski, 4th ed. (New York: W.W. Norton & Company, 2013), 192, 198, 201.

[2] Cabinet of Ministers of Ukraine, *The Constitution of Ukraine*, accessed December 7, 2015, http://www.kmu.gov.ua/document/.../Constitution_eng.doc.

[3] 1 U.S. Code § 204 (a).

diminish the importance of the written form, but instead contribute to the quick and easy distribution of and access to legislative documents. Such access is crucial not only for governing more efficiently and consistently but also for providing the transparency and accountability required in a liberal democracy. The U.S. Federal Register, for example, publishes digitized versions of all legislation issued by the U.S. Congress, enabling nearly anyone to have access to this legislation via the Internet. Thus, one might argue that the written word has an even greater impact in the digital age.

In the field of national security and defense, the importance of writing is evidenced as nowhere else. Beginning with a regiment and ending with the Department of Defense, almost all rules are made and decisions communicated in the form of written documentation. Military officers write most of this documentation, and to do such a job is a great responsibility. If subordinates incorrectly understand and misinterpret provisions of a legislative document, they may act wrongly. During peacetime, the consequences of such errors may include violations of human rights, loss of money and resources, and decline of troop discipline and readiness. During wartime, lack of clarity can cost lives, lost battles, and even defeat in war as a whole. History presents many such examples. One famous account, from the Crimean War (1853–1856), describes the destruction of almost an entire British light cavalry brigade because its commander could not understand the high command's written order and chose to "attack the wrong target."[4] Perhaps ironically, the episode inspired Alfred, Lord Tennyson, to write a narrative poem on the calamitous miscommunication:

> Not tho' the soldier knew
>   Someone had blunder'd:
> Theirs not to make reply,
> Theirs not to reason why,
> Theirs but to do and die[5]

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[4] Desirae Gieseman, "Effective Writing for Army Leaders: The Army Writing Standard Redefined," *Military Review* 95, no. 5 (September-October 2015): 107, accessed December 7, 2015, http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20151031_art016.pdf.

[5] Alfred, Lord Tennyson, *The Charge of the Light Brigade*, the EServer Poetry Collection, EServer website, accessed January 22, 2016, http://poetry.eserver.org/light-brigade.html.

To avoid such tragedies, commanders of all levels must ensure that their policies are correctly communicated in military legislation, so subordinates can properly interpret and apply them.

High schools and universities teach advanced writing skills to military officers. Thus, one may assume that officers can write legislative documents. However, research conducted by Brandon M. Booher and Derek S. Waisanen demonstrates that although the educational system, including military school, helps develop officers writing skills, these skills focus mainly on preparing academic papers and theses and do not translate well to producing the necessary writing for the armed services.[6] Booher and Wisanen list some documents that officer-graduates should be competent in preparing after their appointments. Among them are "memorandums … instructions,"[7] which are documents of a legislative nature. Therefore, it seems that the educational system may somehow be lacking, since, in practice, it prepares officers to write academic papers but not legislative documents.

Drawing on my personal observations—more than 15 working years on revising, reviewing, and drafting military legislation—I find this inference to be correct. For the most part, officers with whom I worked were skilled writers, able to prepare high-quality documents pertaining to their services, but in writing legislation, they were less proficient. This thesis explores why.

B.   LITERATURE REVIEW

No research has been conducted to find and explain the gap between academic writing and legislative drafting; consequently, literature on this specific issue does not exist. However, both academic writing and legislative drafting are kinds of writing and, therefore, general theories of writing should be applicable to each of them. In particular, this literature review examines the prevailing scholarship on how people learn to write

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[6] Brandon M. Booher and Derek S. Waisanen, "Introducing Professional Writing Skills to Future Naval Officers: An Adjunct to NPS Distance Learning" (MBA professional report, Naval Postgraduate School, Monterey, CA, 2008), 2, 12.
http://edocs.nps.edu/npspubs/scholarly/MBAPR/2008/Dec/08Dec_Booher_MBA.pdf.

[7] Ibid., 2.

and how people teach writing, both of which are implicated in a given officer's lack of proficiency in drafting legislation.

1.   How People Learn to Write

Among many theories of learning, three are worth consideration in relation to the present topic. Behaviorism is the first. According to this theory, people learn by responding to situations (environment) they have faced without involving their consciousness. John Watson, one of the founders of this theory, considered the learning process "in terms of stimulus and response, in terms of habit formation, habit integrations and the like."[8] As Watson saw it, people realize that they know something only after they have already obtained such knowledge.[9]

Further researchers found that the strength and weakness of the stimulus-response relationship depends on many conditions. Researchers called such conditions "reinforcements."[10] Edward Thorndike elevated two important reinforcements into laws.[11] His Law of Effect states that individuals learn how to respond better if they receive satisfaction from what causes learning (the stimulus) and worse if they feel discomfort from what causes learning. His Law of Exercise states that the more times individuals repeat responses to the same stimulus, the better they learn how to properly respond.[12] B. F. Skinner described this dynamic as "reward and punishment."[13] It means if individuals receive reward as a consequence of their response, they then learn better how to respond again in the same way, and if they are punished for their wrong response, they quickly learn how to not repeat mistakes. Thus, according to this theory, officers

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[8] John B. Watson, *Psychology as a Behaviorist Views It*, Saylor Academy, accessed December 25, 2015, 7, http://www.saylor.org/site/wp-content/uploads/2012/01/PSYCH305-7.1.pdf.

[9] Ibid., 16.

[10] B. F. Skinner, *The Behavior of Organisms: An Experimental Analysis*, S-F-Walker website, accessed December 25, 2015, 22, http://s-f-walker.org.uk/pubsebooks/pdfs/The%20Behavior%20of%20Organisms%20-%20BF%20Skinner.pdf.

[11] Edward L. Thorndike, *Animal Intelligence*, York University (Toronto, Ontario), accessed December 25, 2015, http://psychclassics.yorku.ca/Thorndike/Animal/chap5.htm.

[12] Thorndike, *Animal Intelligence*.

[13] B. F. Skinner, *Science and Human Behavior*, Appalachian State University, accessed December 25, 2015, 59, http://www1.appstate.edu/~kms/classes/psy3202/Documents/Skinner1953_Operant.pdf.

(and others) can learn writing subconsciously by turning into habit the responses they have encountered in their academic careers. For example, they can learn the structure of texts by accomplishing writing tasks or reading texts and being subsequently rewarded or punished for what they produce. The flaw of this theory is that it does not involve active human agency in acquiring knowledge. The theory, then, only partly explains humans' ability to learn. However, if behaviorism contains some validity, officers will need to mimic legislative writing, not academic writing, to later produce legislative products.

Cognitivism is the second learning theory, according to which individuals have to exert mental effort to obtain knowledge; it does not come automatically. For cognitivists, knowledge is not a fact or surprise for individuals, as behaviorism implies. Instead, individuals acquire knowledge deliberately. Like behaviorism, this theory considers learning to be a process; however, with cognitivism, intentionally acquired knowledge, not unintentionally acquired habit or knowledge, is an output of the process. Grider Clint divides the process of learning into four stages: "One's ability to learn stems from the way one perceives, organizes, stores, and retrieves information."[14] According to the Academic Success Center of Oregon State University, humans pass through these stages consciously by "actively working with [their memory]," using such activities as "repetition … elaboration … associations or connections between ideas … concentration and attention … reviewing material from previous weeks," and so on.[15]

Peggy A. Ertmer and Timothy J. Newby point out that like behaviorism, cognitivism also acknowledges the role of the environment in accelerating or impeding learning.[16] However, according to cognitivism, the mind engages actively with the environment; it gathers information selectively, according to "the individual's interests

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[14] Grider Clint, "Foundations of Cognitive Theory: A Concise Review," Institute of Educational Science, accessed December 25, 2015,14, http://files.eric.ed.gov/fulltext/ED372324.pdf.

[15] Academic Success Center, "The Memory Process," Oregon State University, accessed February 11, 2016, http://success.oregonstate.edu/learning-corner/learning-college/memory-process.

[16] Peggy A. Ertmer and Timothy J. Newby, "Behaviorism, Cognitivism, Constructivism: Comparing Critical Features From an Instructional Design Perspective," *Performance Improvement Quarterly* 26, no. 2 (2013): 51, http://ocw.metu.edu.tr/pluginfile.php/3298/course/section/1174/peggy_2013_comparing_critical_features.pdf.

[and] motivations," as Clint observes.[17] Once necessary information has been received from the environment, M. K. Smith argues, individuals contemplate it in light of knowledge they already have and then make appropriate conclusions that are transformed into their mental plans and strategies.[18] Ertmer and Newby note that "learners' thoughts, beliefs, attitudes, and values are also considered to be influential in the learning process."[19]

According to this theory, while writing or reading texts, officers consciously involve their thought processes in learning to write. Like behaviorism, cognitivism considers individuals to be somewhat passive learners in that they absorb knowledge already existing in the world, however consciously they process that knowledge. This assumption is a flaw of this theory because, in fact, individuals can learn not only passively by absorbing existing knowledge but also actively by creating new knowledge. Despite its incompleteness, cognitivism has wide practical implication, especially for educational purposes since pupils and students mostly learn knowledge already existing in the world. Legislative drafting is also a well-developed technique and process, and therefore, this theory can be effectively applied for teaching officers how to write legislative documents.

The third theory, constructivism, is similar to cognitivism, in that it, too, considers learning to be a mental activity. But constructivism additionally argues that previous knowledge and experience play more important roles in learning. Moreover, according to constructivists Hanna Dumont, David Istance, and Francisco Benavides, "learners are not passive recipients of information," as behaviorism and cognitivism view them; "rather, they actively construct their knowledge and skills through interaction with the environment and through reorganization of their own mental structures."[20] Another way

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[17] Clint, "Foundations of Cognitive Theory," 3.

[18] M. K. Smith, "The Cognitive Orientation to Learning," *The Encyclopedia of Informal Education,* accessed December 26, 2015, http://infed.org/mobi/the-cognitive-orientation-to-learning/.

[19] Ertmer and Newby, "Behaviorism, Cognitivism, Constructivism," 51.

[20] Hanna Dumont, David Istance, and Francisco Benavides, eds. *The Nature of Learning: Using Research to Inspire Practice*, Organization for Economic Co-operation and Development, accessed December 26, 2015, 39, https://www.oecd.org/edu/ceri/50300814.pdf.

constructivism differs from cognitivism, according to Ertmer and Newby, is that "learners do not transfer knowledge from the external world into their memories; rather they build personal interpretations of the world based on individual experiences and interactions."[21] For example, an individual facing an utterly new problem cannot rely on preexisting knowledge; there is none in the case of a completely novel situation.

Nevertheless, individuals begin resolving the problem by associating it with "like" situations previously known, and in doing so, they come up with new knowledge—that they actively and consciously created, not acquired. Behaviorism and cognitivism hardly explain such a phenomenon, but constructivism does. According to this theory, it can be inferred that officers learn writing not just by copying what has been already written but by creating their own novel writings based on their synthesis of previous knowledge and experience with new data. The problem with this theory is that acquiring new knowledge only appears possible if individuals have already acquired some previous knowledge and experience. But how do they obtain knowledge in the first instance? Thus, this theory like others only partly explains humans' ability to learn.

Other theories of learning base their ideas on these three foundational schools of thought. Some of theories—for example, social learning theory and socio-constructivism—emphasize the role of the environment (policy, culture, language, community, role models, family, friends, and the like). These factors or reinforcements, as the UNESCO Education Sector points out, decisively affect learning in terms of what and how individuals learn.[22] Among such factors, Roger Barnard and Lucy Campbell find language to be extremely important. They argue that, "individuals use physical, cultural and psychological tools to learn and to regulate their activity, and language … is the most important of these tools."[23] Thus, the environment may greatly impact officers' abilities to learn writing.

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[21] Ertmer and Newby, "Behaviorism, Cognitivism, Constructivism," 55.

[22] Education Sector, "Most Influential Theories of Learning," UNESCO website, accessed December 26, 2015, http://www.unesco.org/new/en/education/themes/strengthening-education-systems/quality-framework/technical-notes/influential-theories-of-learning/.

[23] Roger Barnard and Lucy Campbell, *Sociocultural Theory and the Teaching of Process Writing: The Scaffolding of Learning in a University Context*, University of Waikato, accessed January 2, 2016, 76, http://researchcommons.waikato.ac.nz/bitstream/handle/10289/433/c?sequence=1.

It is also commonly accepted that frequent reading is an important tool for learning, including learning to write well. Underlining reading's significance for learning, the National Council of Teachers of English observes that "in order to write a particular kind of text, it helps if the writer has read that kind of text. In order to take on a particular style of language, the writer needs to have read that language, to have heard it in her mind, so that she can hear it again in order to compose it."[24] Therefore, while exploring why officers' legislative writing skills are weak, this thesis dedicated some attention to studying what officers read.

2.   How People Teach Others to Write

Humans, being exceptionally social creatures, cannot learn everything by themselves. Lev Vygotsky argues that to obtain some knowledge, individuals need help from teachers.[25] Several approaches propose different kinds of assistance. Although it is difficult nowadays to find a writing course that offers only one particular approach to teaching writing, for analytical purposes, educational approaches can be grouped broadly as traditional, genre, process, and post-process.

The traditional approach involves teaching grammar, punctuation, and mechanics for a particular language. Individuals study letters, *kanji*, or other symbols and the rules for combining them; the spelling and meaning of words; and the structure of sentences. As students become aware of the correct structure of a particular written language, the New South Wales Department of Education and Training advocates that they start making texts, meaning combining sentences into paragraphs and essays according to culturally established organizational principles.[26] Students' knowledge of writing is assessed primarily, as the Department says, "in terms of rules about what [is] correct or

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[24] Writing Study Group of the NCTE Executive Committee, *NCTE Beliefs about the Teaching of Writing*, National Council of Teachers of English, November 2004, accessed January 2, 2016, http://www.ncte.org/positions/statements/writingbeliefs.

[25] Lev Vygotsky, *Mind and Society*, National Jhuo-Lan Experimental Senior High School, accessed December 30, 2015, 6, http://www.cles.mlc.edu.tw/~cerntcu/099-curriculum/Edu_Psy/EP_03_New.pdf.

[26] NSW Department of Education and Training, *Focus on Literacy: Writing*, New South Wales government, accessed December 27, 2015, 8–9, http://www.curriculumsupport.education.nsw.gov.au/primary/english/assets/pdf/writing/fol_writing.pdf.

incorrect."[27] Previous language knowledge and experience matters little in this approach. Because a sentence expresses a complete thought, the traditional approach enables individuals to write their thoughts correctly at least at the sentence level. However, according to the Kamehameha Schools Research & Evaluation Department, this approach "fail[s] to engage and inspire student learning."[28] The approach is rather like teaching someone to ride a bicycle without having a bike in hand. Learners probably will not see an immediate practical use for writing skills while they learn these skills, other than obtaining a solid grade on a paper or in a course.

The genre approach is well defined by Hyejeong Ahn who writes that it "focuses on increasing students' awareness of different ways of organizing information in writing, by discussing distinctive features of different purposeful texts."[29] Individuals are taught to write specific types of text (genres) such as business letters, essays, reports, resumes, and the like. Depending on its purpose, each genre has its own pattern with regard to structure, grammar, style, content, length, and other features. For example, Ken Hyland points out that the purposes of the text can be "procedure—tells us how something is done, description—tells us what something is like, report—tells us what a class of things is like, and explanation—gives reason why a judgment is made."[30] The genre approach implies that individuals can write multiple texts of a specific type if they know the pattern of this type. According to Hyland, the genre approach normally entails the following stages:

> First understanding the purpose of the genre and the settings where it is used.… The second stage involves modelling the genre and analyzing it to reveal its stages and key features (what are the main tenses, themes,

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[27] NSW Department, Focus on Literacy, 9.

[28] Research & Evaluation department, *The Writing Process: An Overview of Research on Teaching Writing as a Process*, Kamehameha Schools, accessed December 27, 2015, 1, http://www.ksbe.edu/_assets/spi/pdfs/reports/WritingProcessreport.pdf.

[29] Hyejeong Ahn, "Teaching Writing Skills Based on a Genre Approach to L2 Primary School Students: An Action Research," *English Language Teaching* 5, no. 2 (February 2012): 3, doi:10.5539/elt.v5n2p2.

[30] Ken Hyland, "Writing Theories and Writing Pedagogies," *Indonesian Journal of English Language Teaching* 4, no. 2 (October 2008): 94, http://idci.dikti.go.id/pdf/JURNAL/JURNAL%20INDONESIAN%20JELT/VOL%204%20ED.2%20OKTOBER%202008/__20111014_032151_669.pdf.

vocabulary, and so on) … The third stage involves the joint construction of the genre with students … Fourth is independent writing, with students working alone or in groups while monitored by the teacher … Finally, the teacher relates what has been learnt to other genres and contexts.[31]

Genres differ from each other also in terms of which social and cultural group of society they serve. Individuals can be taught to emphasize, as Anis S. Bawarshi and Mary Jo Reif say, "legal, public, political, disciplinary, and other everyday genres."[32] According to Hyland, the genre approach's flaw is that individuals are limited in their creativity to the patterns of particular learned genres.[33] As he says, "genres might be taught as moulds into which content is poured, rather than as ways of making meanings."[34] Hence, this flaw is likely to be a contributing factor to officer' deficiency in drafting legislative documents because once they have their hand in writing academic papers, it is difficult for them to switch from the academic genre to a legislative one.

In contrast, the process approach teaches individuals to achieve the necessary written product by going through a specific writing process. Linda Flower and John Hayes point out four principles of this approach. First, writing is mental work, meaning thinking.[35] Little in the writing process happens beyond the mind and certainly not without it. Writing skills, except at the elementary level of learning to transfer characters to paper, are not considered those involving the body. For example, to play soccer, individuals must train body and mind. In writing, the ability to draw nice letters does not translate into an ability to write a profound paper. Second, by thinking, writers create a vision of their future written product, which is the main goal. They set many other sub-goals to achieve the final result.[36] In this view, writing is a directed, not a chaotic

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[31] Hyland, "Writing Theories and Writing Pedagogies," 96–97.

[32] Anis S. Bawarshi and Mary Jo Reif , *Genre: An Introduction to History, Theory, Research, and Pedagogy* (West Lafayette, IN: Parlor Press, 2010), 28, http://wac.colostate.edu/books/bawarshi_reiff/genre.pdf.

[33] Hyland, "Writing Theories and Writing Pedagogies," 98.

[34] Ken Hyland, "Genre-based Pedagogies: A Social Response to Process, "*Journal of Second Language Writing* 12 (2003): 26, http://www2.caes.hku.hk/kenhyland/files/2012/08/Genre-based-pedagogies_a-social-response-to-process1.pdf.

[35] Linda Flower and John R. Hayes, "A Cognitive Process Theory of Writing," *College Composition and Communication* 32, no. 4 (December 1981): 366, http://www.jstor.org/stable/356600.

[36] Flower and Hayes, "Cognitive Process Theory of Writing," 366.

process. By gradually reaching one goal after another, individuals finally produce a desirable output.

Third, some goals can be connected with the main goal indirectly, but they are still important to achieve, and all goals can be modified at any time.[37] This principle contends that some indirect goals should be set and achieved—for example, to make the product more interesting for readers—even though the product meets all prescribed requirements without this additional goal. Writing is seen as a flexible process, and what is written at a moment can be changed according to new knowledge or revelations.

Fourth, the process of creating and achieving goals can be grouped into sequential stages, one transforming into another as progress is made.[38] Goals, including the main goal, can be different depending on a product, but nearly all flow through the following three stages: "Pre-Writing is the stage before words emerge on paper; Writing is the stage in which a product is being produced; and Re-Writing is a final reworking of that product."[39] During the first stage, writers find and organize ideas and knowledge related to their product's topic. During the second stage, they roughly translate these ideas into written words, and during the third stage, writers make big and small corrections to adjust what they made to what they intended to make for clear communication to readers.

Patricia Bizzell criticizes the process approach because it reduces to a few words the most difficult writing task: "'putting meaning into words,' [which] cannot be seen as a mechanical process of finding the right size containers."[40] In Bizzell's assessment, "what's missing here is the connection to social context afforded by recognition of the dialectical relationship between thought and language. We can have thoughts for which we have no words."[41] Another flaw in the staged approach is that it does not consider differences among individuals in terms of their personalities and cultures; it inaccurately

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[37] Flower and Hayes, "Cognitive Process Theory of Writing," 366.

[38] Ibid.

[39] Ibid., 367.

[40] Patricia Bizzell, "Cognition, Convention, and Certainty: What We Need to Know about Writing," in *Cross-Talk in Comp Theory: A Reader*, ed. Victor Villanueva, 2nd ed. (Urbana, IL: National Council of Teachers of English, 2003), 397, http://eric.ed.gov/?id=ED474209.

[41] Ibid., 395.

assumes individuals possess the same level of intelligence and cultural constructs that, as James Berlin explains, perform "in a rational manner, adjusting and reordering functions in the service of the goals of the individual."[42]

Finally, the post-process approach bases its conception on a critique of the process approach by saying that to simply teach writing mechanically, as the latter offers, is nearly impossible. At the same time, the post-process approach does not propose, as Lee-Ann M. Kastman Brelich condemns, any "clear pedagogical agenda" as a substitute for the process approach.[43] The post-process approach, according to Jennifer Sinor and Michael Huston, just "asks us to turn our attention to the socially situated nature of writing itself" and "is centered on the social, political, and contextual forces that surround writing."[44] Their primary idea is that each writer and written product is unique and cannot be adjusted to any process or standard.[45]

According to Brelich, post-process teaching amounts to dialogs between learners on one side and teachers, social institutions, and readers on the other.[46] Peter Vandenberg, Sue Hum, and Jennifer Clary-Lemon endorse this approach, maintaining that "the individual writer and his or her intentions are … interconnected with other writers, readers, and social institutions in a complex web of relations."[47]

Additionally, they argue that "writing is shaped by material places and intellectual spaces (locations)," meaning that the environment in which the individual writer makes a product affects the product, because the writer takes from his or her environment ideas,

[42] James Berlin, "Rhetoric and Ideology in the Writing Class," in *Cross-Talk in Comp Theory: A Reader*, ed. Victor Villanueva, 2nd ed. (Urbana, IL: National Council of Teachers of English, 2003), 723, http://eric.ed.gov/?id=ED474209.

[43] Lee-Ann M. Kastman Brelich, "Post-Process "Pedagogy": A Philosophical Exercise," in *Cross-Talk in Comp Theory: A Reader*, ed. Victor Villanueva, 2nd ed. (Urbana, IL: National Council of Teachers of English, 2003), 104, http://eric.ed.gov/?id=ED474209.

[44] Jennifer Sinor and Michael Huston, "The Role of Ethnography in the Post-Process Writing Classroom," *Teaching English in the Two-Year College* (March 2004): 371, http://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=1625&context=english_facpub.

[45] Ibid.

[46] Brelich, "Post-Process "Pedagogy": A Philosophical Exercise," 103.

[47] Peter Vandenberg, Sue Hum, and Jennifer Clary-Lemon, eds., *Relations Locations Positions: Composition Theory for Writing Teachers*, NCTE library, accessed December 30, 2015, 10, http://www.ncte.org/library/nctefiles/resources/books/sample/24003intro_x.pdf.

knowledge, and experience.[48] Teachers are encouraged to take into account the cultural background of writers because, as Jiajia He says, "writing reflects the contingency of our beliefs and values and in so doing composes identity (positions)."[49] Even though the post-process approach "does provide valuable pedagogical insights that can guide teaching practice," he adds, it fails to "offer concrete applications to the writing classroom."[50]

C.   POTENTIAL EXPLANATIONS AND HYPOTHESES

Drawing on the literature review, three hypotheses were created. First, while officers are being taught academic writing, it may be that they are not receiving the necessary knowledge and experience to write legislative documents. In short, academic writing and legislative drafting need to be distinctively taught and learned, because they require predominantly different sets of knowledge. Second, it may be that knowledge and experience gained through academic writing, combined with other knowledge and experience obtained beyond academic writing courses, offer little help to officers in constructing the new knowledge and experience required specifically for writing legislative documents. The two genres and their goals are not similar enough for individuals to use academic writing as a foundation from which to create new knowledge for legislative drafting. Third, it may be that the environmental factors impede the development of officers' legislative drafting skills.

The explanation of the first hypothesis, implying that study of academic writing does not give officers knowledge and experience in legislative drafting, stems from the analysis of educational approaches and cognitive learning theory. While teaching officers grammar, punctuation, and other writing mechanics using the traditional approach provides them basic knowledge useful for both types of writing, basic skills are not enough; they are necessary but insufficient for legislative drafting. As well, goals that

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[48] Vandenberg, Hum, and Clary-Lemon, ed., *Relations Locations Positions*, 9.

[49] Jiajia He, "Applying Contemporary Western Composition Pedagogical Approaches in University EFL Writing Context: A Case Study of a Writing Workshop at a Chinese University" (Ph.D. diss., Indiana University of Pennsylvania, 2009), accessed December 31, 2015, 31, https://dspace.iup.edu/bitstream/handle/2069/170/Jiajia%20He.pdf?sequence=1.

[50] Ibid., 31.

officers set and reach according to the process approach can be different for each writing type and, thus, must be learned and set specifically for a given type. As well, the genre approach separates academic writing and legislative drafting significantly, since these writings have their own patterns, unrelated to one another. Thus, academic writing does not—and cannot—translate into legislative drafting skills. The post-process approach does not provide tangible methods to analyze the differences and similarities between academic writing and legislative drafting. However, combined with other ideas gleaned during the literature review, the post-process approach informs the next two hypotheses.

The second hypothesis, which proposes that officers' knowledge of academic writing alone or together with other writing knowledge does not generate officers' legislative drafting skills, is based on constructivist theory. In fact, legislative drafting is constructed knowledge because these skills were absent in the world initially. Armed with appropriate knowledge and experience, officers can write legislative documents. Yet, they miss the mark, because academic education does not instill knowledge and experience specific enough to legislative topics. Nor do other writing knowledge and experience come closer to the mark. I assume officers acquire their knowledge mainly from reading in two ways: first, the reading can be assigned to them on a mandatory basis, or, second, they can choose it voluntarily. Either way, the genres of other readings are unlike legislative drafting and, thus, officers have not been exposed often enough to the patterns of the latter to succeed at transferring one skill set to another. Officers' writing experiences include writing assignments for non-writing courses, daily communications via email, preparing military reports and so on. Again, the genres of these writings are not related to legislative drafting. Officers use their environment to gain knowledge and experience, but in this case, the environment does not compel officers to adopt their writing skills to its purposes.

According to the third hypotheses, the environment is proactive; it directly affects officers' ability to write. First, the intended reading audience shapes what and how officers write. Officers' reading audiences consist of friends, professors, commanders, and others who stand at the opposite end of the communication line. In satisfying their audiences' varied requirements, officers are rewarded when they write appropriately for

specific readers. Additionally, writing exchanged between these sides mostly involves issues that both sides know well. Thus, even imprecise writing can satisfy readers, who more or less automatically fill in the blanks. For example, if professors encounter some ambiguity in a student's academic paper, they tend to unconsciously interpret this ambiguity in the right direction because they know in advance the goals and topic of the paper. Therefore, officers may learn to write with a level of precision unacceptably low for legislative drafting.

Second, the environment or culture may dictate its own policy. For example, the academic environment is intolerant of plagiarism. While paraphrasing, officers may use inaccurate synonyms, obscure expressions, and sentence structure that shift meaning. Such practice may become writing habits. Third, each environment uses its own verbal language. For example, in the academic environment, officers communicate with professors in one language style with certain jargon, while in the military environment, they speak with their soldiers in another. Using a specific language style for an extended time can create habits that then appear in one's writing.

D. RESEARCH DESIGN

This thesis seeks to discover why officers skilled in academic writing have difficulty writing legislative documents. The scope of research is limited to the U.S. officers who have obtained education at military universities. The first step of my research is to clarify what officers need to learn to write academic papers and legislative documents. For example, I compared textbooks on academic writing and U.S. legislative drafting manuals to ascertain how and what these two genres teach about grammar, punctuation, mechanics, structure, stages, and other language requirements. With this data, I identified the similarities and differences between academic writing and legislative drafting. The differences revealed the kinds of knowledge officers skilled in academic writing lack to be efficient in legislative drafting. Certainly, there is some overlap, such as grammar and punctuation. However, I found the differences between these two kinds of writing to be so deep that, being taught academic writing, officers still remain untaught in legislative drafting. If so, these findings verify that my first hypothesis proves true.

The second step involved investigating the main types of mandatory and voluntary readings that shape officers' new knowledge. Readings were examined in terms of how their structure, style, language, and other features help or hinder officers' ability to create new knowledge useful for writing legislative documents. I divided reading into three parts: academic, military, and everyday readings. What officers read during their academic learning, I found from previous studies; there are many books on academic writing where authors list types of reading that students engage. For example, H. Ramsey Fowler and Jane E. Aaron name among students' reading "textbooks, journal articles, essays, and works of literature."[51] For types of military reading, I drew from military regulations that prescribe such reading. For example, Army Regulation 25-50, permits only "three forms of correspondence authorized for use within the Army: a letter, a memorandum, and a message."[52] Thus, officers read mainly these types of reading. As well, officers read military regulations, which is a type of legislative writing.

Examining everyday reading, I focused on advertisements, news, and literary work. According to several researchers, "today's typical adult gets about 600–625 chances to be exposed to ads in one form or another per day."[53] Interestingly, there is a general tendency that "people are paying less attention to TV ads … as they can access more and better information on-demand on the web."[54] Further evidence that people read advertisements is that "magazine advertising sells products."[55] As well, according to the National Survey, "three quarters of Americans [again including officers] get news at least daily… [and] most Americans use many media devices to get their news, with television

[51] H. Ramsey Fowler and Jane E. Aaron, *The Little, Brown Handbook*, 12th ed. (Boston: Pearson, 2012), 2.

[52] U.S. Army Chief of Staff, *Preparing and Managing Correspondence*, Army Regulation 25–50, Washington, DC: U.S. Army Chief of Staff, June 17, 2013, 1, http://www.apd.army.mil/pdffiles/r25_50.pdf.

[53] "Our Rising Ad Dosage: It's Not as Oppressive as Some Think," *Media Matters* (February 15, 2007): 1–2, quoted in Michael Laitman, "*The Benefits of the New Economy: Resolving the Global Economic Crisis through Mutual Guarantee*," January 2013, ARI Institute website, 81, http://ariresearch.org/wp-content/uploads/2012/06/benefits-of-the-new-economy.pdf.

[54] Thales S. Teixeira, "The Rising Cost of Consumer Attention: Why You Should Care, and What You Can Do about It," Working Paper, Harvard Business School, January 17, 2014, 5, 20, http://www.hbs.edu/faculty/Publication%20Files/14-055_2ef21e7e-7529-4864-b0f0-c64e4169e17f.pdf.

[55] Guy Consterdine, "How Magazine Advertising Works," 5th ed. London: PPA Marketing, July 2005, 6, https://www.magazinescanada.ca/uploads/File/files/general/HMAW-05.pdf.

(87 percent) followed by computer (69 percent), radio (65 percent), print (61 percent), cellphone (56 percent) and tablet (29 percent)."[56] So, news as a type of reading is widely used by people and thus deserves examination. Regarding literary works, a study by The National Endowment for the Arts demonstrates that beginning in 2002 Americans read literature more and more, and in 2008, for example, "more than half of the U.S. adult population—113 million Americans—did literary reading."[57] According to this report, "'literary' reading refers to the reading of any novels, short stories, poems, or plays in print or online."[58]

The third step involved investigating the main types of mandatory and voluntary writing that can form officers' experience. Writings were also divided into academic, military, and everyday writing. Regarding academic writing, Fowler and Aaron provide a list of such approximate assignments:

- Informative essay

- Personal response to a text

- Informative website

- Literacy narrative posted to a blog

- Critique of a text

- Critique of a visual

- Argument essays

- Essay exam

- Research paper

- Annotated bibliography

- Literary analyses

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[56] "The Personal News Cycle: How Americans Get Their News," National Survey, Associated Press, March 17, 2014, http://www.ap.org/Images/AP-NORC%20Personal%20News%20Cycle%20Final%20Release_tcm28-15954.pdf.

[57] "Reading on the Rise: A New Chapter in American Literacy," Report, National Endowment for the Arts, January 2009, 3, https://www.arts.gov/sites/default/files/ReadingonRise.pdf.

[58] Ibid.

- Research report

- Laboratory report[59]

Military writing was examined in much the same way as military reading.

Everyday writing for this study included different kinds of paperwork officers produce while carrying out their rights and responsibilities as citizens, members of communities and social groups, and just as individuals. For example, they fill out varies types of online forms provided by federal or state agencies, insurance companies, service providers, online shops, and the like. The method of investigation is the same as for the second step. Going through steps two and three, I anticipated finding the goal and genre differences between mentioned reading and writing and legislative documents to be so significant that they cannot translate from the former into the latter. If so, my second hypothesis would appear true as well.

The fourth step involved exploring environmental factors that affect writing. Audience (professors and military commanders) and culture (citing, document length, organization, and purpose) were assessed in terms of whether each favors or impedes officers in developing legislative drafting skills. For my third hypothesis to be true, I would find that multiple environments are hampering factors.

Along with the sources already involved, I studied a representative sampling of scholarly books, journal articles, academic writing-center website postings about how best to teach academic writing, books and journal articles for teaching legislative drafting, and articles and books on military writing.

This thesis is not intended to examine academic writing policy and legislative drafting policy in terms of whether the policies themselves should be changed. It is accepted that each has its distinct purpose and style.

Even though this study focuses on military officers, many of the analyses can apply to civilian officials involved in the preparation of legislative documents on

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[59] Fowler and Aaron, *Little, Brown Handbook*, 172.

different subjects. Thus, the study can be used for further research, and not only in the field of national security and defense.

E.   THESIS OVERVIEW

In 2004, I served at the Ukraine Ministry of Defense as a lawyer. One day, an officer, the director of the ministry's Scientific Department, came to me asking for help. Three days earlier (as usual in the military, on Friday afternoon) the Minister called him in and said something akin to the following:

> Your Department prepared quite important and sound research on the necessity of military reform. It contains sufficient arguments and evidence justifying that we need to begin reform, because our armed forces are too large and detrimental to national economy. I have also many times thought about inevitability of big changes of the Armed Forces, and your report ultimately encouraged me to start these changes. I invited you for assigning a very important task: to draft a Military Reform Law. On Monday, I am going to speak with the Prime-Minister of the Cabinet of Ministries about this project and persuade him to begin the reform. But the Prime-Minister is a busy person, and he usually says, "do not tell me about ideas but bring some product I can see." So, I will show him the draft.

> I am returning to you the report; make a bill from it. It is too big for law; please, reduce it up to 20–25 pages, but not less because the law should be representative and command respect. And remember, to pass it through Parliament, the bill should inspire and convince everybody about the necessity of reform. Make it such a way that those who would read the draft became our supporters not critics. My speechwriter will help you write.

The officer worked diligently all weekend on what eventually became the Ukrainian Military Reform Law; he cut his report and restructured it into the format of law with parts, articles, and sections. The speechwriter provided advice because he knew the minister's view on papers. On Monday, the minister read the draft and felt satisfied. Then, he went to the Cabinet of Ministries to meet with the prime-minister. Returning, he called in the officer again. "You wrote a good draft," the minister said. "The Prime-Minister was content with it. He promised to submit it to Parliament and endorse the draft when it is considered through parliamentary committees." According to the Ukraine constitution, the Cabinet of Ministers has the right to initiate bills in parliament, so to

enlist the prime minister's support was a great achievement. "Since I was in the building where the government's lawyers work," the minister continued, "I visited the Director of the Legal Department of the Cabinet of Ministers and pleaded with him to consider the draft informally before launching legislative procedure through the government's agencies such as the Ministry of Justice, Ministry of Finances, and others. He is waiting for you."

The next day, the officer met with the Director of the Legal Department. The director was very busy; there were many documents around him. He took the draft and to the officer's surprise, not even putting it on a table, quickly browsed through and returned it to the officer. Then, he gave him two pens with red and green ink. "Imagine, you have been fired upon enactment of this law; please underline with red ink what is useful for you in this text as a sufferer. Then, imagine you are an authority who must exercise this law; underline with green ink necessary text, too," said he. When the officer completed this job, it turned out that in sum only about five pages were underlined. "What is underlined is your law," said the lawyer. "Please get rid of the rest, rearrange the text, and bring it to me again."

So, the officer came to me for advice. "I do not know what to do," he said "Five pages are too few for such a law." "Why?" I asked. "It is a very important law," he replied. "It has to be grandiose. More than 300,000 troops will be decommissioned as well as military bases and other facilities will be closed. It is a major policy, you know." I took the draft and looked through it. "I am forced to disappoint you," I argued. "The text with green ink also cannot be in this bill; you have repeated authority's competence that has been already defined in other laws." He was really disappointed. The grandiose law from 25 pages had to be reduced to one and a half pages. The officer pleaded, "I cannot show it to the minister; he would dismiss me. He has already made a public announcement that the ministry prepared a profound legislative act to provide for a smooth reform. I can hardly imagine him holding up one and a half pages and saying to Parliament: "'Look, here is everything that the reform needs. Please approve it, and I promise we will successfully cope with such a complicated task."'' I came to you seeking a way to save 25 pages, but instead, got another shot in my heart." I tried to explain to

him that it is not the function of law to inspire and convince people, and if previous law defines something, the next law does not reassure or repeat it.

"I wish I knew these requirements before writing," he sighed. "As for me, if a text is divided into parts, articles, and sections, it is law, no matter what the content is. It is the last day of my career," he lamented. I suggested he pass the buck to the Director of the Legal Department. In fact, he did so, and the minister, after unsuccessfully fighting with the government's lawyers, yielded. The law consisting of one and a half pages was adopted because, without the provisions the law contained, we could not even start the reform. This law "on state guarantees of social protection of servicemen exempted from service in connection with the reform of the Armed Forces of Ukraine and members of their families" has just three articles, but every word in the articles is necessary and has meaning; as well, these words are enough to support the reform while other words in the initial draft of 25 pages would have only caused confusion with understanding and implementing.

I share this story because it clearly reflects my hypotheses explaining why officers who graduated from military academies where they had a great deal of persuasive academic writing are not prepared to write legislative documents. After some preliminary consideration on this topic, I concluded that first, these officers simply were not taught to write legislative documents when they were attending academic writing courses. Officers were learning how to write academic papers, but these skills do not equip them to draft legislation. Second, the knowledge and experience that officers draw from life and that serve them well in creating new knowledge are also unfit to envisage legislative drafting techniques. Third, while writing legislative documents, officers are under the pressure of the environment in which they work, and this pressure impacts their written output.

In this story about drafting the Ukrainian Military Reform Law, all three hypotheses played out. The officer, a writer of this law, did not know how to write legislation. He generated the draft by relying on his own knowledge and experience as a scientist using the research report as a framework. Besides, the minister, who also was not an expert in drafting laws, misled the officer about what the law needed to contain. Not to comply with the minister's requirements meant bad consequences for the officer.

Together, lack of familiarity, self-interpretation, and outside influences led the officer to write a legislative draft that, in fact, was far off the mark.

F.   CHAPTER OUTLINE

This thesis represents arguments and evidence testing my hypotheses and consists of five chapters. In Chapter I, I introduce the research question, the significance of the topic, the state of the knowledge thus far, hypotheses, and methods. Chapter II considers teaching issues. Namely, resting on three different pedagogic approaches, it reveals what and how officers are currently taught to write academic papers and legislative documents. Chapter III examines officers' reading and writing that happen beyond the teaching of writing itself. It examines sources from which officers gain their knowledge and experience and that become their reference for writing legislative documents. Academic, military, and everyday reading and writing are considered in individual sections within this chapter. Chapter IV explores the environment that shapes officers' writing skills while they are enrolled in academic programs, perform their military service, and live usual lives as citizens and members of various communities. Sections within this chapter include audience, policy, and language culture. Chapter V presents conclusions, including which of the three hypotheses showed the most promise in answering the research question, and policy recommendations stemming from these findings.

II.   WHAT AND HOW OFFICERS ARE TAUGHT TO WRITE

To teach officers academic writing skills, writing courses usually combine three main teaching approaches: traditional, genre, and process. This combination adequately contributes to officers' skills in writing academic papers, but it does not adequately prepare them to write legislative documents. This chapter explores the kinds of knowledge and experience each teaching approach contributes to officers' academic writing skills and legislative drafting skills respectively, and how knowledge and experience of academic writing and legislative drafting interact with each other.

Among approaches, the traditional approach provides the most useful knowledge and experience for writing legislative documents, since it focuses on the levels of letter, word, and sentences. At these levels, there are many similarities between academic writing and legislative drafting. However, many exceptions from traditional grammar, punctuation, and mechanics are inherent in legislative drafting, and, therefore, even within the traditional approach, additional and specific knowledge and experience are still required for officers to be proficient in writing legislative documents.

Since the genre of academic papers is unfit for writing legislative documents, teaching academic writing using the genre approach contributes virtually nothing to obtaining knowledge and experience in legislative drafting skills. Not only are the structures of academic papers and legislative documents vastly different, but their content is as well. For the genre approach to be helpful, officers would need instruction specifically about the genre of legislative writing.

The process approach is examined in this chapter as three stages: prewriting, writing, and rewriting. The prewriting stages of academic writing and legislative drafting are vastly different. The writing stages share knowledge and experience insofar as using definitions, but otherwise differ significantly. The rewriting stage of academic writing is useful for legislative drafting, but the knowledge and experience such learning brings about is not sufficient, since the rewriting stage of academic writing is only a part of the rewriting stage of legislative drafting.

A. TRADITIONAL APPROACH

This approach primarily focuses on teaching officers to write sentences with correct grammar, punctuation, and mechanics. Academic writing and legislative drafting use mostly the same grammar, punctuation, and mechanics; thus an academic writing course, while preparing officers to produce academic papers, also teaches officers to generate an element of legislative documents. However, legislative drafting rules have many, albeit minor, exceptions, so specific knowledge is still necessary for making high-quality legislative documents. Figure 1 depicts how knowledge and experience given by the traditional approach (circle 1) and knowledge and experience needed for legislative drafting (circle 2) coincide with each other. Circle 1 is larger than circle 2 but still is not able to cover circle 2 entirely. Area B of circle 2 is specific knowledge and experience related to grammar, punctuation, and mechanics in legislative documents that the traditional approach does not provide.

1 – Knowledge and experience given by the traditional approach
2 – Knowledge and experience needed for legislative drafting
A – Area of shared knowledge and experience
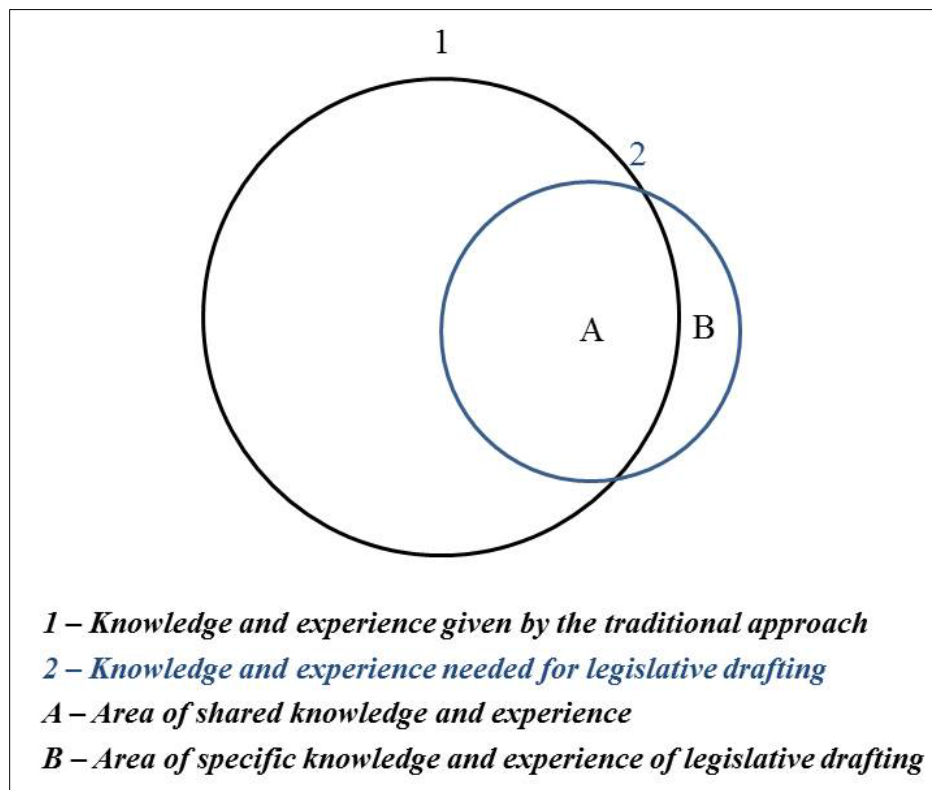*B – Area of specific knowledge and experience of legislative drafting*

Figure 1.   Traditional Approach for Learning to Write and its Significant Overlap with Legislative Writing

Grammar is an essential element of language, and it is responsible for, as Fowler and Aaron say, "word forms" and "word order."[60] The *Delaware Legislative Drafting Manual* admits that "generally, the ordinary rules of grammar apply to legislative drafting."[61] However, it points out some grammar nuances inherent in legislative drafting. One is particularly important: "Unless it is clear from the context, use as the subject of each sentence the actor (the person or entity) to whom a power, right, or privilege is granted or upon whom a duty, obligation, or prohibition is imposed."[62] Legislative documents are required to be addressed to a precise physical or legal entity. As well, the *Delaware Manual* emphasizes a special role for grammar in legislative drafting:

> Grammar, in its simplest sense, is a collection of rules imposed by each language to ensure, to as great an extent as possible, a complete understanding of what is written or spoken. In contrast, grammar, when used in drafting legislation, is a collection of rules developed to substantially decrease any confusion or ambiguity as to the meaning of a statute.[63]

For this reason, the *Delaware Manual* recommends using grammar to produce "short, simple sentences … [with] a single thought … [and] avoid excessive use of dependent clauses, parallel clauses, compound sentences, or other complex sentence structures."[64]

Many drafting rules concern avoiding misplaced, dangling, and squinting[65] modifiers that could cause vagueness and ambiguity in legislative documents. Even the U.S. Constitution is afflicted with dangling modifiers. For example, the Second Amendment begins with "A well regulated Militia, being necessary to the security of a

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[60] Fowler and Aaron, *Little, Brown Handbook*, 252.

[61] Legislative Council Division of Research, *Delaware Legislative Drafting Manual*, 2015 Edition, Delaware State Legislature, 79, http://legis.delaware.gov/Legislature.nsf/Delaware%20Legislative%20Drafting%20Manual%20%282015%20Update%20-%20Website%29.pdf.

[62] Ibid.

[63] Legislative Council Division, *Delaware Legislative Drafting Manual*, 79.

[64] Ibid.

[65] The squinting modifier can be logically applied to more than one word in a sentence, so readers do not know what word it exactly modifies.

free State…"[66] These words do not connect to the rest of this Amendment. As H. Richard Uviller and William G. Merkel point out, the issue is more than clunky grammar; the discrepancy between the two parts of the Second Amendment gave rise to more than two centuries of disagreement between the several states and the federal government as to the intent of the provision and, therefore, the scope of Americans' rights to bear arms. Until 2008, the federal interpretation of the Second Amendment emphasized the "well regulated Militia" of the prefatory clause, a view that did not entail an individual right to own firearms—rather, the opposite stance of the states.[67] A pair of U.S. Supreme Court cases in 2008 and 2010 resolved the disagreement, bringing the national-level view in line with the states' interpretation and formally recognizing the individual right to bear arms as a fundamental right of all Americans.[68] Still, after two centuries of rancor amid the lack of clarity that began with dubious drafting, the issue of guns in American society remains so contentious that the law in and among the states and localities is fractured.

The point is that in academic and other writings, modifiers "may be awkward [and] funny,"[69] as Fowler and Aaron say, but not so in the case of legislative documents where each word has serious meaning. In these documents, such modifiers are often confusing and require interpretation. Thus, legislative drafting discourages modifiers in legal sentences, while academic writing does not to the same degree.

Punctuation is another element of written language structure. To write legislative documents, the *Arkansas Legislative Drafting Manual* vaguely instructs authors to "observe general grammatical rules of punctuation."[70] The *Delaware Manual* clarifies

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[66] U.S. Constitution, amendment 2,
http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html.

[67] H. Richard Uviller and William G. Merkel, *The Militia and the Right to Arms, or, How the Second Amendment Fell Silent* (Durham, NC: Duke University Press, 2002), 55–57.

[68] District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. Chicago, 561 U.S. 742 (2010).

[69] Fowler and Aaron, *Little, Brown Handbook*, 381.

[70] Bureau of Legislative Research, *Legislative Drafting Manual*, November 2010, Arkansas State Legislature, 43,
http://www.arkleg.state.ar.us/bureau/legal/Publications/2010%20Legislative%20Drafting%20Manual.pdf.

this, stating "when drafting legislation, use the Oxford (or serial) comma."[71] However, the *Oregon Bill Drafting Manual* states that the general principle of using punctuation is to reduce it to a minimum and not affect the sentence's meaning.[72] Otherwise, a comma may cause ambiguity as it did, for example, in a contract between two Canadian companies, putting at stake 1 million Canadian dollars. Here, because of the comma, the question arose as to how parts of the sentence connect with one another.[73] That is why the *Oregon Manual* also suggests, "the period should be used as frequently as possible,"[74] instead of a comma. There are some exceptions for using commas and periods in legislative documents. The *Arkansas Manual*, for example, prescribes that "periods and commas do not appear inside quotation marks unless the punctuation is part of the quoted material."[75] As well, it instructs that "in a series following a colon, use semicolons to separate the items in the list,"[76] not commas. Such detailed instruction in legislative drafting manuals suggests that punctuation matters for generating unambiguous writing.

Among punctuation marks, quotation marks are used in legislative drafting in a special way. The *Delaware Manual* directs, "when drafting legislation, many grammatical conventions regarding quotation marks are ignored."[77] In academic wring, as Diana Hacker and Nancy Sommers point out, "words used as words are ordinarily italicized … [however] quotation marks are also acceptable."[78] In academic writing, one can write, for example, that *climb* and *debt* contain the same silent letter *b*. Or one can write that "climb" and "debt" contain the same silent letter "b." In legislative drafting,

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[71] Legislative Council Division, *Delaware Legislative Drafting Manual*, 102.

[72] Legislative Counsel Committee, *Bill Drafting Manual*, 17th ed., Oregon State Legislature, 2014, 3.14, https://www.oregonlegislature.gov/lc/PDFs/draftingmanual.pdf.

[73] Ian Austen, "The Comma that Costs 1 Million Dollars (Canadian)," *New York Times*, October 25, 2006, http://www.nytimes.com/2006/10/25/business/worldbusiness/25comma.html?_r=0.

[74] Ibid.

[75] Bureau, *Legislative Drafting Manual*, 48.

[76] Ibid.

[77] Legislative Council Division, *Delaware Legislative Drafting Manual*, 101.

[78] Diana Hacker and Nancy Sommers, *A Pocket Style Manual*, 7th ed. (Boston: Bedford/St. Martin's, 2015), 71.

italics are not appropriate in such cases, and the use of quotation marks is mandatory, for example, as the *Arkansas Manual* says, "when defining a term."[79] As well, quotation marks and italics are used specifically when the legislative document is being amended, repealed, or supplemented. Again, punctuation in legislative documents conveys very specific meanings that differ from what is meant in academic or general knowledge writings.

The colon, semicolon, apostrophe, and other marks in both kinds of writings are similar but again with some small but important exceptions for legislative drafting. Regarding the use of the colon, for instance, Hacker and Sommers say that it is wrong to use the colon "between a verb and its object or complement" and "between a preposition and its object."[80] However, in legislative documents such applications of the colon are acceptable, since paragraphing is broadly used in these documents. As well, rules of capitalization, abbreviation, numbers, italics, and other mechanics learned during academic writing courses are applied a bit differently in legislative drafting. Thus, some inconsistencies between academic writing and legislative drafting in terms of grammar, punctuation, and mechanics exist. Unfortunately, officers are not aware of these important differences unless trained in them.

Knowing grammar, punctuation, and mechanics, officers are able to put words together into sentences that, as William Strunk Jr., and E. B. White prescribe, have to be positioned in an agreeable chain to avoid "confusion and ambiguity."[81] As a result, one must find a complete thought in each sentence. By structure, sentences may be simple, compound, complex, and compound-complex. However, a legislative sentence has to be as simple as possible and amount to, as the *Oregon Manual* says, "a legal subject and a legal action … [that] together constitute the rule. In more complicated forms, the legislative sentence also may contain exceptions, conditions and cases."[82] Thus, for legislative purposes, among four kinds of sentences the most used is a simple sentence.

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[79] Bureau, *Legislative Drafting Manual*, 48.

[80] Hacker and Sommers, *Style Manual*, 67.

[81] William Strunk Jr., and E. B. White, *The Elements of Style*, 4th ed. (Boston: Pearson, 2000), 28.

[82] Legislative Counsel Committee, *Bill Drafting Manual*, 3.4.

This is often not the case with academic writing where students are encouraged by custom to generate complex sentences or use a mixture of long and short sentences.

Sentences also can be divided by their function, and, while each has its role and place in academic writing, not all of them are called for in legislative drafting. Susan Thurman offers the following distinction: "A declarative sentence makes a statement…an interrogative sentence asks a question … an imperative sentence issues a command, makes a request, or gives instructions … an exclamatory sentence expresses strong emotion."[83] Of these, interrogative and exclamatory sentences are not used in legislative drafting. For example, the interrogative sentence: "How must one act in case of fire?" would be normally turned into the declarative sentence "Actions in case of fire."

In sum, some knowledge given to officers during academic writing courses according to the traditional approach can be usefully used for writing legislative documents. However, legislative drafting uses more narrow rules regarding grammar, punctuation, and mechanics than academic writing does. Also, the structure and function of legislative sentences, as compared to sentences of academic and other writings, are limited to some extent. As well, officers' proficiency in writing legislative documents depends, in part, on how much attention the traditional approach pays to teaching them how to avoid misplaced, dangling, and squinting modifiers. Finally, a set of even well-written sentences would still be like a pile of bricks, not a building, until, according to genre and process approaches, these sentences were arranged in a logical text that addresses specific goals and functions. Thus, the traditional approach needs to be modified by other approaches if it to be useful for legislative writing.

B.   GENRE APPROACH

An academic paper and legislative document are of different genres, and thus, officers cannot use the academic paper pattern to write legislative documents. Figure 2 demonstrates that knowledge and experience given by the genre approach for academic writing (circle 1) has no shared area with knowledge and experience needed for

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[83] Susan Thurman, *The Only Grammar Book You'll Ever Need: A One-Stop Source for Every Writing Assignment* (Avon, MA: Adams Media Corporation, 2003), 45.

legislative drafting (circle 2). These circles are separate from each other with no relevant overlap.

1 – Knowledge and experience given by the genre approach for academic writing
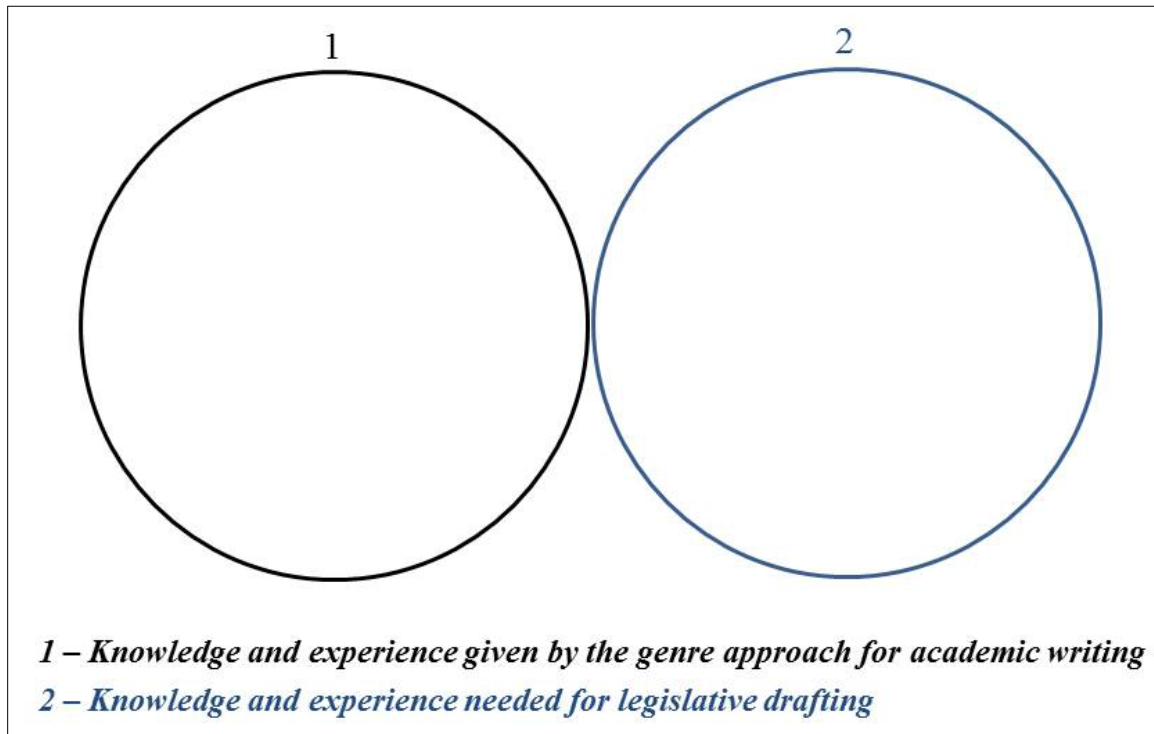*2 – Knowledge and experience needed for legislative drafting*

Figure 2.   Genre Approach: Lack of Overlap between Academic and
Legislative Writing

According to its genre, an academic paper is typically made up of the following three blocks: introduction, main body, and conclusion. The blocks consist of paragraphs that are a series of sentences. Blocks and sub-blocks are known as sections and can be represented with short headings bearing the main idea contained within each. It is rare to find a section or sub-section containing only one paragraph. The introduction is the initial part of the academic paper and consists of a "hook," a thesis statement, and a road map laying out the remainder of the paper. The hook runs the first; it should be something interesting to draw in and orient readers' attention, such as context, significance, and/or a problem statement. Readers then come upon the thesis statement letting readers know what will be argued. The thesis statement is a concise, one-sentence answer to the research question that represents the main argument. The road map ends the introduction

by outlining the main points and organization of the paper, so readers can understand how ideas and evidence will be represented. To ensure smooth passage between the hook and either the topic or the thesis statement some intermediate sentences are used, most typically focused on contextual background information or a synopsis of what is known to date about the topic and applicable theories.

The main body of an academic paper contains a set of arguments and data that relate back to proving the thesis statement. Each argument holds, according to Kate. L. Turabian, a "claim … reasons for accepting it [the claim], and the evidence that supports those reasons."[84] The claim is normally a topic sentence at the beginning of each paragraph, followed by reasoned analysis and evidence sentences supporting the claim and what the claim means for proving the thesis.

The conclusion in an academic paper is the summary of what readers have just read and reiteration of the main argument. However, the summary does not repeat literally the thesis statement; resting on the paper's main points and evidence, it emphasizes the logic of the thesis statement. The summary is followed by a discussion of how this particular study fits within existing literature and its contribution to that literature. After this, we often see recommendations suggesting how to use the new knowledge the research has produced.

As stated by Anne Whitaker, "academic writing follows a standard organizational pattern."[85] The prominent feature of this pattern is that while reading academic papers, readers engage with the main argument throughout. First, they became aware of the thesis in the introduction; second, throughout the main body; and finally, in the conclusion. Such repetition of the argument in three different versions contributes to a better understanding of the academic paper's ideas, logic, and contributions.

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[84] Kate. L. Turabian, *A Manual for Writers of Research Papers, Theses, and Dissertations*, 8th ed. (Chicago: University of Chicago Press, 2013), 52.

[85] Anne Whitaker, *Academic Writing Guide 2010: A Step-by-Step Guide to Writing Academic Papers*, City University of Seattle, September 2009, 3, http://www.vsm.sk/Curriculum/academicsupport/academicwritingguide.pdf.

Legislative documents also have a structure but not the one prescribed by academic writing. Nonetheless, even with different structures, they may be viewed as a specific genre because they have many common features that distinguish legislative documents from other writings. The literature suggests several ways to structure legislative documents. First, for some legislative documents, depending on their subject matter, drafting manuals require standard structuring. For example, the *Arkansas Manual* prescribes a set structure for "creation of a Board, Committee, Commission, Task Force, etc."[86] Second, the *Colorado Legislative Drafting Manual* says that if there exists a legislative document with similar subject matter, its structure should be used for writing another document.[87] Third, the *Oregon Manual* proposes a "typical order of sections,"[88] stated as follows:

Sections of a bill ordinarily should be arranged as follows:

1. Definitions.

2. Short title (rare).

3. Statement of policy (rare).

4. The leading purpose of the bill.

5. Subordinate provisions; i.e., conditions, exceptions and special cases important enough to be stated as separate sections.

6. Administrative provisions; i.e., authority and responsibility for administration and procedure.

7. Subordinate (or "housekeeping") amendments, ordinarily arranged in ascending order of ORS number. The arrangement may be varied, and amended sections may be interspersed with new sections if this arrangement is more conducive to a logical development of the bill.

8. Saving clause (rare).

9. Temporary and transitional provisions.

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[86] Bureau, *Legislative Drafting Manual*, 80.

[87] Office of Legislative Legal Services, *Colorado Legislative Drafting Manual*, December 8, 2014, 1–8, http://tornado.state.co.us/gov_dir/leg_dir/olls/LDM/OLLS_Drafting_Manual.pdf.

[88] Legislative Counsel Committee, *Bill Drafting Manual*, 6.1.

10. Penalties.

11. Specific repeals.

12. Operative or applicable date.

13. Emergency clause or nonstandard effective date.

14. Referendum clause.[89]

Finally, if previous constructions cannot be applied to the structure, the legislative document can be built according to general principals proposed, for example, by the *Guidelines for Drafting Local Laws*.[90] Particularly, the Guidelines suggest putting "the most important ideas first and the less important ideas, for example, unusual cases and procedural detail, later," and putting "material of direct interest to the ordinary user of the legislation before other provisions, for example, administrative provisions."[91] Elements of the document's structure usually become the document's parts, divisions, and subdivisions that, as the Parliamentary Counsel's Office reminds us, "are all numbered and have a short description of the subject concerned in the heading."[92]

While explanations and evidence occupy significant parts of an academic paper, their role in a legislative document is small. The reason for this is, as Geoffrey Bowman says, "purpose provisions and explanations are too unruly to include in the text of the Bill. The risk is that they create obscurity."[93] Normally, explanations and evidence are put in explanatory notes or appendices that accompany legislative documents. The reasoning and background information are not unimportant, but they—as will be discussed later—are intended to persuade and inform readers; in other words, they perform functions that are not inherent in legislation. In contrast, persuading and informing are primary functions of an academic paper.

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[89] Legislative Counsel Committee, *Bill Drafting Manual*, 6.1-6.2.

[90] Office of the Queensland Parliamentary Counsel, *Guidelines for Drafting Local Laws*, July 1, 2010, 18, https://www.legislation.qld.gov.au/leg_info/publications/guidelines_local_laws.pdf.

[91] Queensland Parliamentary Counsel, *Guidelines for Drafting Local Laws*, 18.

[92] Parliamentary Counsel's Office of Western Australia, *How to Read Legislation: A Beginner's Guide*, May 2011, 18, http://www.department.dotag.wa.gov.au/_files/How_to_read_legislation.pdf.

[93] Geoffrey Bowman, "The Art of Legislative Drafting," *Amicus Curiae* 64 (March/April 2006): 4, http://journals.sas.ac.uk/amicus/article/view/1117/1000.

Additionally, legislative documents should avoid the repetition of provisions that have the same idea because provisions have equal force against each other. In the case of their inconsistency, users of the legislative document will face the problem of which provision they should select and apply. In contrast, the academic paper persistently repeats its main argument across the text.

In sum, due to different structure and substance of academic papers and legislative documents, these genres do not apply to each other. Consequently, academic writing courses that use the genre approach poorly equip officers with the necessary knowledge and experience to write legislative documents. The same can be said for the papers and theses written as requirements to obtain academic degrees.

C.   PROCESS APPROACH

Academic writing and legislative drafting have similar stages but different goals; thus, teaching officers how to set and achieve goals for academic writing does not bring them knowledge and experience on how to set and achieve goals for legislative drafting. The purposes of academic papers, as Lynn Troyka and Douglas Hesse point out, are "to inform and to persuade."[94] Therefore, academic writing puts on paper an author's statement and an explanation of how this statement was reached. The statement can be, according to the *Academic Writing Guide*, an idea, argument, or answer that contributes something new to the existing knowledge.[95] The explanation is intended to demonstrate to readers how the authors created their statements and thus enable readers to assess whether the statement is true.

The legislative document has other purposes. According to the *Delaware Manual*, they are: "(1) to create or establish; (2) to impose a duty or obligation; (3) to confer a power, create a right, or grant a privilege; and (4) to prohibit conduct."[96] One can observe

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[94] Lynn Quitman Troyka and Douglas Hesse, *The Simon & Schuster Handbook for Writers*, 10th ed. (Boston: Pearson, 2013), 47.

[95] University of Technology Sydney, *Academic Writing Guide Part 1 - Academic Writing,* UTS Library, February 2013, 9, https://www.lib.uts.edu.au/sites/default/files/attachments/page/Academic%20Writing%20Guide%20Part%201%20-%20Academic%20Writing.pdf.

[96] Legislative Division, *Delaware Legislative Drafting Manual*, 73.

that none of the purposes of academic papers coincide with those of legislative documents. Consequently, the job of legislative drafting is to put on paper legislative provisions, as the Office of the Scottish Parliamentary Counsel clarifies, "in a manner which implements policy accurately and effectively."[97] This clarification implies that the legislative document does not present a new idea as the academic paper does; instead, ideas that a legislative document presents should be made and proved to be valuable for putting into action before starting to draft such document. Nor do legislative documents provide readers with the deliberations that led to the policy or procedure.

There is, however, one common goal for both types of writings: each has to provide logical, precise, and concise outputs. According to David A. Welch, a paper can be written in four ways. First, a paper translates an author's idea with the exact meaning. Second, a paper still contains the meaning of the author's ideas, but readers may interpret the paper in their own way because some words may have more than one meaning. Third, a paper has gaps in the meaning, and each reader fills these gaps with his or her own meaning. Finally, a paper is designed to encourage readers to create their own meanings.[98] Academic writing and legislative drafting are both required to produce outputs that meet the first way of Welch's classification but not the other three.

Despite different goals, both types of writing can be divided into prewriting, writing, and rewriting stages.

1.   Prewriting Stage

At this stage, the goals of academic writing and legislative drafting are vastly different; therefore, the teaching of the academic prewriting stage does not convey knowledge and experience of the legislative drafting prewriting stage. From Figure 3, one can graphically see that these stages do not coincide.

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[97] The Office of the Scottish Parliamentary Counsel, *Plain Language and Legislation,* February 2006, 7, http://www.gov.scot/resource/doc/93488/0022476.pdf.

[98] David A. Welch, "Why International Relations Theorists Should Stop Reading Thucydides," *Review of International Studies* 29, no. 3 (July 2003): 309, doi:10.1017/S0260210503003012.
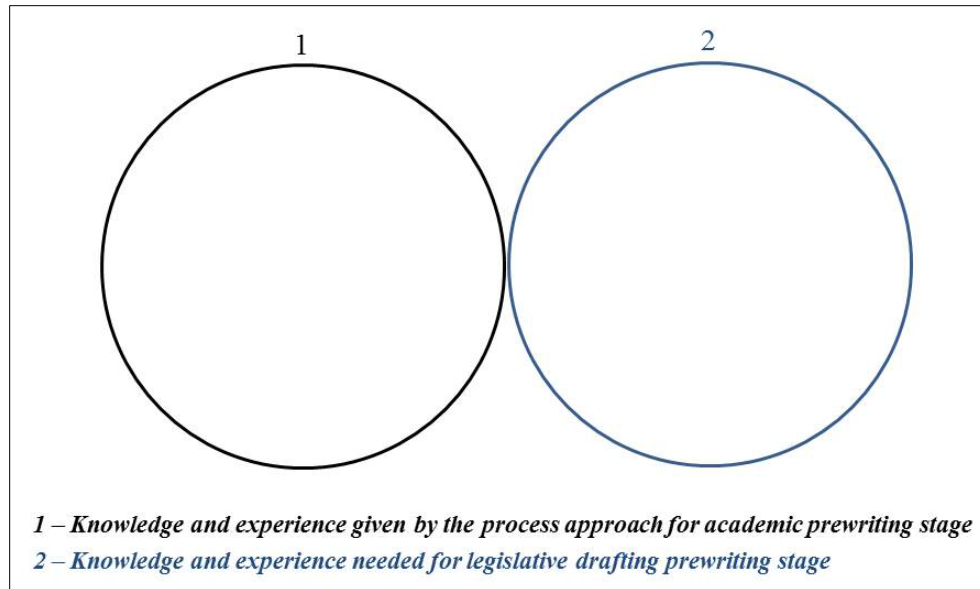
Figure 3.   Process Approach: Prewriting Stage's Lack of Overlap between
Academic and Legislative Writing

The academic prewriting stage involves gathering ideas and data and arranging them in an outline by choosing a topic, asking the research question, conducting research, and collecting foundational information. The topic identifies the field of information where the research is to be conducted. However, the topic is too broad to make the research feasible, because it contains various features that can be viewed in many ways. There is no need to explore all features; thus, authors focus on one particular element of the topic by asking a more narrow research question. This question should be doable, meaning the research scope is not too broad or narrow and supporting resources are available. The research question also aims at creating new knowledge, not just restating known facts. It engages analytical skills and sparks the interest of the audience. As well, Hacker and Sommers suggest that hypothetical, simplistic, or value-based research questions need to be avoided.[99]

Conducting research, authors seek necessary theoretical and data sources. Then, according to Hacker and Sommers, they evaluate data in terms of their significance to the

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[99] Hacker and Sommers, *Style Manual*, 91–92.

topic, newness and obsolescence, reliability, and, "length and depth."[100] Each source is evaluated for potential biases, purpose, and reliability. After evaluating multiple sources, the authors select those that are relevant and research them further.[101] To collect useful information found from sources, authors create a sources' catalog. For example, data from these sources may be collected in the form of "photocopies, printouts, or electronic files."[102] One of the purposes for keeping such a collection is to ensure proper citing of the sources. Ignoring citing or doing it incorrectly constitutes a violation called plagiarism. An academic paper with plagiarism loses its academic integrity and credibility and is likely to be taken out of circulation. As well, a plagiarized paper transfers lack of integrity and credibility to the author who will likely suffer punitive measures.

The prewriting stage of legislative drafting, on the other hand, is designed not to gather new ideas and data but to examine agreed-upon ideas in terms of how to put them into a legislation form. Legislative drafting begins with understanding whether the idea— for example, the resolution of some problem—is a function of legislation. If an idea fits the legislative format, it is considered for use, no matter the author of this idea. Disputes between authors around who first came up with an idea are not obstacles for a drafter to exploit this idea in legislation. Legislation is faceless. Legislative documents and policies that these documents introduce do not belong to concrete persons and are not objects of intellectual property. While authors of academic papers gather and collect data for creating new knowledge, authors of legislative documents do not create new knowledge from data; they just refine data to a degree suitable for legislative purposes.

Another prewriting step in legislative writing, according to the *Hawaii Legislative Drafting Manual*, is to "examine the legal framework," which means ascertaining whether any existing legislative documents are relevant to the problem and have

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[100] Hacker and Sommers, *Style Manual*, 95.

[101] Ibid., 94–100.

[102] Ibid., 103.

simultaneously "to be amended, repealed, or supplemented"[103] for consistency with the new legislative document. An academic paper cannot alter other academic papers to make them agree. Academic papers' authors may revise their works and issue them as a new edition, but the mechanisms and purpose of revising academic papers and amending, repealing, or supplementing legislative documents are different.

The next step is to check whether the military institution has statutory authority to issue the legislative documents that an officer is tasked to write. Thus, before drafting documents, officers, as the *Connecticut Manual for Drafting Regulations* suggests, "should scrutinize the authorizing statute to determine the extent to which the legislature has delegated rulemaking authority."[104] In contrast, officers who write academic papers are limited in what they can put in the paper's content only by assignment prompt, the research question, and availability of resources.

The *Colorado Manual* offers more questions officers need to consider during the legislative-document prewriting stage: "When will the [legislative document] become effective? To whom or to what is the [legislative document] to apply? … Do any other [institutions] have similar legislation? Is there a model or uniform act on the subject?"[105] These questions are not relevant to constructing an academic paper, except in the sense that neither academic nor legislative writing wants to see documents that duplicate what already exists in their respective literatures.

In sum, having learned the prewriting stage of academic writing, officers, nonetheless, are unprepared to go through the prewriting stage of legislative drafting, and therefore may unwittingly skip steps in this important stage, making them more likely to introduce substantial flaws into legislative documents.

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[103] Legislative Reference Bureau, *Hawaii Legislative Drafting Manual*, 10th ed., Hawaii Legislative Reference Bureau, December 2012, 3, http://lrbhawaii.info/reports/legrpts/lrb/2012/legdftman12.pdf.

[104] The Legislative Commissioners' Office of the Connecticut General Assembly, *Manual for Drafting Regulations*, Connecticut General Assembly, January 2015, 6, https://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

[105] Office of Legislative Legal Services, *Colorado Drafting Manual*, 1–4.

2. Writing Stage

For both kinds of writing, this stage serves to convert ideas into written words. Such converting, however, is performed differently between academic writing and legislative drafting, and officers tend not to acquire skills to write legislative documents by writing academic papers. At this stage, only the inclusion of definitions is shared. Figure 4 illustrates the narrow overlap between these types of writings during the writing stage. We see that shared area A is quite small and thus hardly contributes to legislative drafting.

1 – Knowledge and experience given by the process approach for academic writing stage
2 – Knowledge and experience needed for legislative drafting writing stage
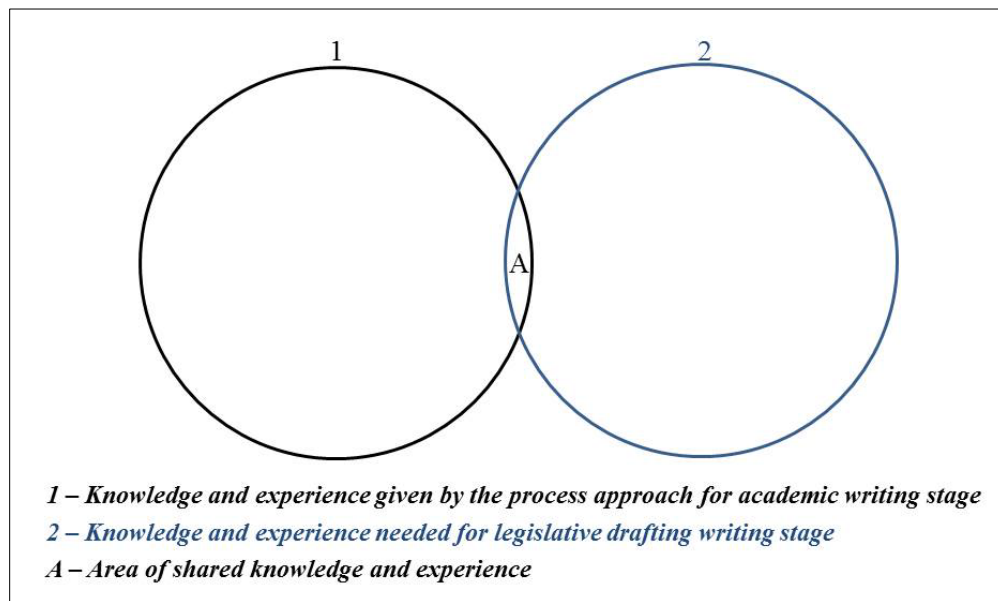*A – Area of shared knowledge and experience*

Figure 4.   Process Approach: Writing Stage's Minimal Overlap between
Academic and Legislative Writing

For academic papers, the paragraph is a perfect unit to represent and develop ideas. Normally, the first sentence of the paragraph, called a topic sentence, represents an idea. The following sentences of the paragraph develop this idea and present evidence to support it. There may be a concluding sentence summarizing the point of the paragraph and/or a statement about how the paragraph's point fits with the paper's overall argument. Depending on how the argument is going to be developed, paragraphs may be chronological, descriptive, problem\solution, cause\effect, or compare\contrast in nature.

Some literature represents more types of paragraphs. Each type of paragraph has its specific transition signals (words and phrases that logically link paragraphs and sentences in paragraphs with each other). Correctly chosen paragraph composition makes the text logical, so readers can proceed without losing connections between ideas.

Contrary to academic writing, for legislative drafting, as the *Guidelines for Drafting Local Laws* state, "the basic provision unit is the section[;] … a section may be divided into a number of subsections[;] … a section or subsection may contain paragraphs[;] … a paragraph may contain subparagraphs[;] … a subparagraph may contain sub-subparagraphs, though this is unusual."[106] All units have to be numbered for their identification because, as Ann Seidman, Robert B. Seidman, and Nalin Abeysekere say, "lawmakers and judges can refer to particular ones"[107] and often do so without referring to anything else in the document. For example, lawmakers can refer to units for amending, repealing, or supplementing them. Such text division, called paragraphing, provides easier reading and eliminates ambiguity because, as Victor Thuronyi says, "[it] reveals the logical structure of a sentence at a glance; it divides the sentence into elements which can more readily be comprehended one at a time and shows graphically the relationship between these elements."[108]

For example, when members of the Ukrainian Research Institute of Civil Protection wrote the *Draft Code of Civil Protection of Ukraine*, they put in the Code the following words:

> The emergency rescue services are divided into the state, industrial, municipal, and the emergency rescue services of companies and emergency rescue services of non-governmental organizations. The emergency rescue services can be specialized or unspecialized and established on a professional or non-professional (part-time) basis.[109]

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[106] Queensland Parliamentary Counsel, *Guidelines for Drafting Local Laws*, 4.

[107] Ann Seidman, Robert B. Seidman and Nalin Abeysekere, *Assessing Legislation: A Manual for Legislators*, February 2003, 48, http://iknowpolitics.org/sites/default/files/assessing20legislation20-2001.200320-20en20-20pi.pdf.

[108] Victor Thuronyi, *Drafting Tax Legislation*, International Monetary Fund, accessed October 2, 2015, 8, https://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch3.pdf.

[109] Ukrainian Research Institute of Civil Protection, *Daft Code of Civil Protection of Ukraine*, State Emergency Service of Ukraine, September 11, 2008, translated by the author of this paper, article 51, mns.gov.ua/laws/regulations/pub_discussion/20080911/kodeks.doc.

During revision of the draft, these words were rearranged specifically as follows:

The emergency rescue services are divided into:

1.   State, industrial, municipal, company, and non-governmental;

2.   Specialized and unspecialized;

3.   Professional and non-professional (part-time).[110]

In the first instance, a paragraph is used as a unit; there are 43 words in this paragraph. In the second rendering, a numbered section is used; it consists of only 24 words and is more easily comprehended in an outline format than as the paragraph.

Prescribed variation in sentences and words also differs in the writing of academic and legislative documents. To make an academic paper interesting for readers, Hacker and Sommers recommend using "sentence variety,"[111] which means writers are required to change structure and length of sentences and use synonyms throughout the paper. To Strunk and White, the text is poorly written if "the structure of its sentences … [has] mechanical symmetry and singsong."[112] However, the *Sutherland Statutory Construction* states, "unlike literary composition, legislative style should avoid variation in sentence form and should use identical words for the expression of identical ideas to the point of monotony."[113] Using synonyms, as is encouraged in academic writing, is thus not appropriate to legislative drafting. The *Assessment Report on the Legislative Drafting Manuals of the Palestinian Authority* says, "synonyms for the same legislative concept"[114] in legislative documents are not used. They "create ambiguity … [and] courts

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[110] Verkhovna Rada of Ukraine, *Code of Civil Protection of Ukraine*, Verkhovna Rada website, accessed January 25, 2016, translated by the author of this paper, article 23, http://zakon4.rada.gov.ua/laws/show/5403-17/print1436495731018529.

[111] Hacker and Sommers, *Style Manual*, 15.

[112] Strunk and White, *Elements of Style*, 25.

[113] Norman J. Singer, *Sutherland Statutory Construction*. § 21:5 (7th ed. 2012), quoted in Legislative Council Division of Research, *Delaware Legislative Drafting Manual*, 2015 Edition, Delaware State Legislature, 78, http://legis.delaware.gov/Legislature.nsf/Delaware%20Legislative%20Drafting%20Manual%20%282015%20Update%20-%20Website%29.pdf.

[114] Directorate for Public Governance and Territorial Development, *The Assessment Report on The Legislative Drafting Manuals of the Palestinian Authority,* 2011, Organization for Economic Co-operation and Development, 2011, 33, 72, http://www.oecd.org/mena/governance/50402734.pdf.

commonly assume in legislative interpretation that if a different word or phrase is used it is intended to mean something different."[115]

Academic writing teaches authors how to define terms. According to Fowler and Aaron, "a definition says what something is and is not, specifying the characteristics that distinguish the subject from the other members of its class."[116] Especially, the authors suggest, there should be defined terms that "[do] not refer to anything specific or concrete and … [have] varied meanings."[117] Creating new knowledge, authors of academic papers certainly need to define new material, concepts, and theories they have developed. As well, they need to clarify known material for conducting analysis and synthesis. Academic writing also often contains multiple definitions of the same term, discussion about the usefulness and accuracy of each definition, and a conclusion stating why one definition was selected over the others for the purposes of that particular study.

By comparison, in legislative drafting, the *Delaware Manual* states:

Definitions are an important tool in the drafter's arsenal as they can be used for any of the following purposes:

1.   To define a general term in order to avoid explaining it throughout the bill.

2.   To avoid frequent repetition throughout the bill of the full title of an officer or agency.

3.   To give an exact meaning to a word that has several dictionary meanings.

4.   To define a technical word that is not commonly used or understood.

5.   To limit the meaning of a term that, if not defined, might be defined by a court in a manner different from the intent of the General Assembly.[118]

Academic papers (textbooks, scholar articles, dissertations, and the like) have definitions serving all these same purposes, except the last one. Thus, academic writing and legislative drafting use definitions for similar purposes. However, definitions in academic papers are likely to be debated, newly created, and used at the discretion of the paper's

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[115] Directorate, *The Assessment Report*, 72.

[116] Fowler and Aaron, *Little, Brown Handbook*, 102.

[117] Ibid., 190.

[118] Legislative Division, *Delaware Legislative Drafting Manual*, 20.

author, when drafting legislative documents, officers must observe the list of the purposes more narrowly.

Take, for example, the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime or Terrorism Financing, as well as Financing Proliferation of Weapons of Mass Destruction."[119] The full title of the agency in charge as mentioned in this Law contains 28 words, and it is repeated verbatim in the text 125 times. The definition of the title contains only three words; since the name of the Law is quite long, a simple calculation shows that using this definition instead of the full title has reduced the Law's text by 14 pages! Readers of the law are released from reading an excess of 14 pages that have the full title of the agency used repeatedly. While detecting long-repeated expressions and turning them into definitions is almost a mandatory task for drafters, authors of academic papers may deliberately ignore doing so for meeting paper length requirements. Academic authors may also use variations on the definition, which is unacceptable in legislative writing.

3.   Rewriting Stage

Rewriting stages of academic writing and legislative drafting are similar to each other. Interestingly, the rewriting stage of legislative drafting is broader than that of academic rewriting. Therefore, officers miss knowledge and experience of that part going beyond academic re-writing's stage. In Figure 5, the interaction of both stages is depicted graphically. One may find that area B of circle 2 is specific knowledge and experience not given to officers by the process approach when they study academic writing.

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[119] Verkhovna Rada of Ukraine, *On Prevention and Counteraction to Legalization (Laundering) of the Proceeds From Crime or Terrorism Financing, as well as Financing Proliferation of Weapons of Mass Destruction*, Verkhovna Rada website, accessed January 25, 2016, translated by the author of this paper, Title, http://zakon4.rada.gov.ua/laws/show/1702-18/print1436495731018529.
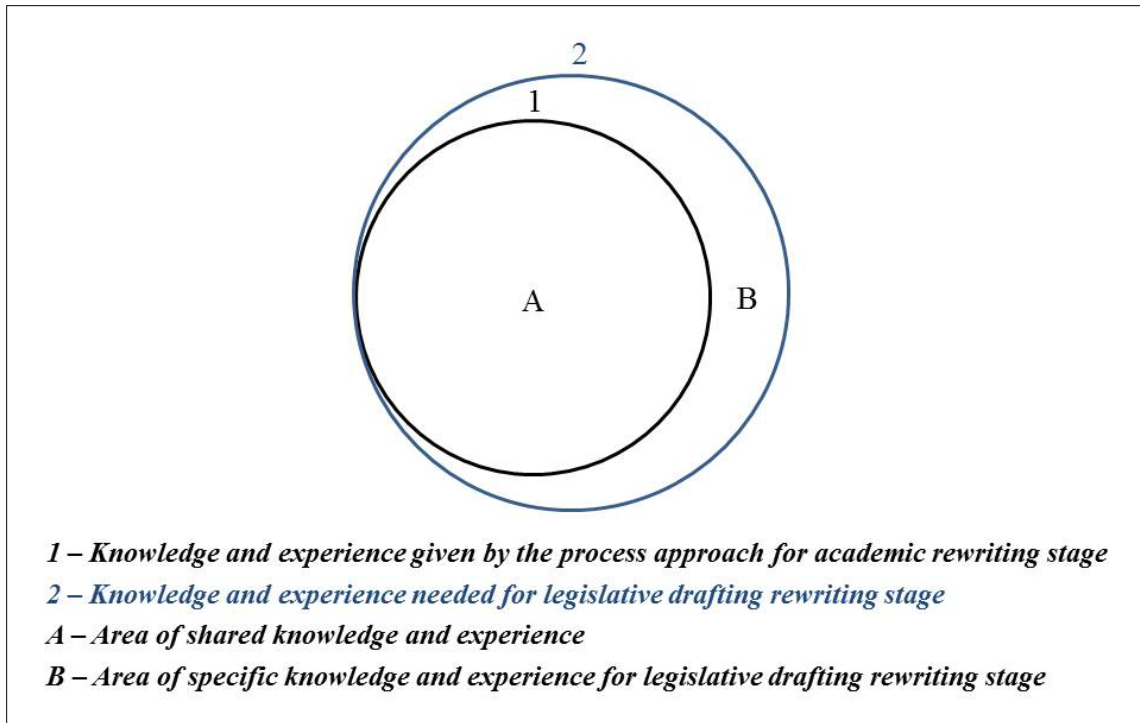
Figure 5. Process Approach: Rewriting Stage's Incomplete Overlap between
Academic and Legislative Writing

In academic writing, the rewriting stage embraces three sub-stages: revising, editing, and proofreading. According to Troyka and Hesse, "revising refers to making changes that affect the content, meaning, and organization of a paper; … editing means finding and fixing errors … made in grammar, spelling, punctuation, capitals, numbers, italics, and abbreviations;"[120] and "proofreading is a careful, line-by-line reading of a final, clean version of … writing."[121] Of these three, the revising sub-stage is perhaps the most important, since making a logical argument that is well supported is the main purpose of academic papers. The other two sub-stages are important in that they reflect on the credibility and legitimacy of the author's ideas and argument, and readers deserve to not be distracted from considering the argument.

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[120] Troyka and Hesse, *Handbook for Writers*, 79.

[121] Ibid., 82.

In legislative drafting, the rewriting stage, according to the *Maine Legislative Drafting Manual*, involves revising, including legal revising, "technical processing," and "legal proofreading."[122] Revising is intended to check whether "the draft … reflects the underlying purpose and intent," complies with the constitution and other legislation, and has appropriate structure, numbering, and language.[123] While revising, the Seidmans and Abeysekere suggest also considering any draft in terms of whether it prevents corrupt behavior.[124] As well, the *Guidelines for Drafting Local Laws* prescribe that drafts should be consistent with "fundamental legislative principles," which, for example, "include requiring that legislation has sufficient regard to—(a) rights and liberties of individuals; and (b) the institution of Parliament."[125] During technical processing, the *Maine Manual* continues, legislative history of the document is checked if the draft is intended to amend, repeal, or supplement some of its units.[126] Finally, the *Maine Manual* clarifies that legal proofreading involves "checking for errors of grammar, punctuation, spelling, structure and arrangement and by helping ensure the draft's consistency, coherence and clarity ... [as well as addressing] substantive ambiguities or inconsistencies in the draft."[127]

One can see that the revising of the academic paper is quite different from the revising of the legislative document and a sub-stage such as technical processing is only determined for legislative drafting. One can find also that officers have to know about fundamental legislative principles and about behavior that is considered corrupt. For instance, fundamental legislative principles are laid down in the U.S. Constitution and its amendments; U.S. officers should know these not only as citizens but as officials and especially as legislative drafters. With regard to ferreting out language that could encourage corrupt behavior, it does not appear that U.S. officers are taught special methodologies designed to reveal corruption risks in draft documents. I did not find any

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[122] Office of the Revisor of Statutes, *Maine Legislative Drafting Manual*, Maine Government, August 2009, 11, http://www.maine.gov/legis/ros/manual/Draftman2009.pdf.

[123] Ibid., 11, 10.

[124] Seidman, Seidman, and Abeysekere, *Assessing Legislation: A Manual for Legislators*, 168.

[125] Queensland Parliamentary Counsel, *Guidelines for Drafting Local Laws*, 30, 41.

[126] Office of the Revisor of Statutes, *Maine Legislative Drafting Manual,* 11.

[127] Ibid.

anti-corruption methodology used in the United States, but in countries of positive legal systems such methodologies are usually part of national law. In Ukraine, for example, The Ministry of Justice issued "the Methodology for Anti-corruption Expertise,"[128] in which many factors are given that can lead to corruption if they are present in the draft. For example, if a legislative document determines a duty or obligation but does not define the officials on whom such duty or obligation is imposed, this wording can encourage corruption.[129]

Despite the differences between academic writing and legislative drafting at the rewriting stage, the area of shared knowledge and experience, as Figure 5 displays, remains substantial. This area includes the similarities that both types of writing meet while checking their outputs for logic, conciseness, and preciseness; for grammar, punctuation, and mechanics; as well as for accuracy of references. However, care should be taken because these similarities do not necessarily lead to exactly the same results. The examination of the traditional and genre approaches reveals that legislative drafting leans heavily toward text simplicity, while academic writing may be composed at a high level of complexity because its readership is expected to be well-educated. Thus, when revising the structure of sentences, legislation drafters are likely to dismantle compound, complex, and compound-complex sentences into simple ones and eliminate repetition and synonyms, while authors of academic papers rarely see the need to make such changes and certainly not to the same degree.

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[128] Ministry of Justice of Ukraine, "On Approval of the Methodology for Anti-corruption Expertise," Decree No. 1380/5, June 23, 2010, Verkhovna Rada website, http://zakon4.rada.gov.ua/laws/show/v1380323-10.

[129] Ministry of Justice of Ukraine, "Methodology for Anti-corruption Expertise," subsection 2.3.

III. OFFICERS' READING AND WRITING EXPERIENCE

Officers are not specially taught to write legislative documents, but in practice they create such documents, in part, drawing on knowledge and experience that they obtained from reading and writing that are integral parts of their lives. This chapter examines officers' reading and writing from their academic experience, military service, and private lives and concludes that these are insufficient to prepare them for legislative writing.

Although officers spend a significant amount of time reading and writing during academic studies, it turns out that the knowledge and experience they gain from these sources contribute little to legislative drafting skills. While military legislative documents—instructions, laws, manuals, standard operating procedures, and directives— read by officers during military service can generate new knowledge and experience significantly applicable for performing legislative drafting, most military reading and writing—such as memorandums, letters, emails, and PowerPoint slides—are not suitable for producing new knowledge and experience necessary for legislative writing tasks. Among everyday reading and writing in which officers engage during their private time, only non-military legislative documents—state laws, consumer agreements and instructions, and the like—are significantly applicable to legislative drafting skills, but officers only occasionally read such documents and do not study their structure or content to replicate them later.

A. ACADEMIC WRITING AND READING ASSIGNMENTS

This section reveals that knowledge and experience officers obtain by accomplishing academic writing and reading assignments are not applicable to their legislative drafting skills.

1.   Academic Writing Assignments

While attending university, an officer completes various academic writing assignments, but none of them can provide a pattern for writing legislative documents. Take again a list of such assignments proposed by Fowler and Aaron:

- Informative essay

- Personal response to a text

- Informative website

- Literacy narrative posted to a blog

- Critique of a text

- Critique of a visual

- Argument essays

- Essay exam

- Research paper

- Annotated bibliography

- Literary analyses

- Research report

- Laboratory report[130]

To demonstrate what these assignments require, Fowler and Aaron give examples of each assignment type enabling them to examine each in terms of its compatibility with legislative documents. The general structure of the assignments (except the informative web-site, literary narrative posted to a blog, and annotated bibliography) is the same as for the academic paper described earlier in this thesis; namely, they consist of an introduction, main body, and conclusion. In contrast, the informative web-site is made up of a banner, menu, and usually brief introductory text.[131] The literary narrative posted to

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[130] Fowler and Aaron, *Little, Brown Handbook*, 172.

[131] Ibid., 133.

a blog accords with its name; it is a narrative, more like a story structure.[132] Annotated bibliographies cite, summarize, and, at times, assess the scope and validity of the arguments found in the source documents.[133] The purpose of most academic assignments, according to Fowler and Aaron, is to "explain, … argue, … analyze, … interpret, … synthesize, … [and] evaluate"[134] events, phenomena, and objects given for consideration. Consequently, while writing these analytical assignments, officers do not obtain knowledge and experience that can be foundational for creating new knowledge and experience related to legislative drafting.

2. Academic Reading Assignments

At universities officers are required to read course material to gain knowledge and critical thinking skills, but this material does not provide officers with knowledge and experience necessary for drafting legislative documents. As has been pointed out in Chapter I, most academic readings, according to Fowler and Aaron, are "textbooks, journal articles, essays, and works of literature."[135] The genre of these readings is the same as the genre of an academic paper and, thus, unlike the structure or purpose of legislative documents. Moreover, very few academic pieces provide knowledge about which laws exist and what they direct.

In addition, academic readings do not specifically provide knowledge and experience on how to write because they aim at other goals. Granted, some instructors encourage students to model their paper sections and arguments after a particularly well-written journal article or book chapter, but this is relatively uncommon.[136] Instead, to examine reading assignments, Troyka and Hesse suggest the following three steps. The first is to "summarize. Comprehend the literal meaning …. Read 'on the lines.'"[137] The

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[132] Fowler and Aaron, *Little, Brown Handbook*, 134.

[133] Ibid., 612.

[134] Ibid., 781.

[135] Fowler and Aaron, *Little, Brown Handbook*, 2.

[136] Sandra R. Leavitt, Director, Graduate Writing Center (Monterey, CA: Naval Postgraduate School), interview with author, April 3, 2016.

[137] Troyka and Hesse, *Handbook for Writers*, 20.

second is to "analyze…. Read 'between the lines' for inferences."[138] According to Troyka and Hesse, to analyze, which is central to academic reading, is to do the following:

- Identify the key assertions or claims

- Separate facts from opinions

- Identify rhetorical appeals

- Identify the evidence

- Identify cause and effect

- Describe the tone, and look for bias

- Identify inferences and assumptions

- Identify implications[139]

Their third recommended step is to "synthesize. Connect what you've summarized and analyzed with your prior knowledge or experience, with other ideas or perspectives, or with other readings."[140] After completing these three steps for active reading, they recommend: "Evaluate. Read 'beyond the lines.' Judge the quality of the material or form your own informed opinion about it. Answer such questions as, 'Is it reasonable? Fair? Accurate? Convincing? Ethical? Useful? Comprehensive? Important?'"[141] Going through such critical-thinking processes, officers should come to understand what readings are about and the logic of arguments but not how these readings are composed. Even if officers pay attention to how a reading is structured, they glean knowledge and experience for writing academic papers, which differ significantly from those needed to write legislative documents.

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[138] Troyka and Hesse, *Handbook for Writers*, 20.

[139] Troyka and Hesse, Handbook for Writers, 25.

[140] Ibid., 20.

[141] Ibid.

B.   MILITARY WRITING AND READING ASSIGNMENTS

This section examines the kind of knowledge and experience officers gain while writing or reading such military documents as letters, memoranda, and messages. It finds that the knowledge and experience officers obtain from these can hardly be used for drafting legislative documents.

1.   Military Writing Assignments

During military service, officers are required to write several types of military documents following prescribed structures and simplified language. Military documents, except messages, are quite formal and can contribute to officers' legislative drafting skills in the sense that both prescribe using plain language. The requirement to use this kind of language is set out in the *Plain Writing Act of 2010* that requires U.S. federal agencies to produce "clear Government communication that the public can understand and use."[142] The Act requires writing to be "clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience."[143] Such policy accords with legislative drafting policy that calls as well for using plain language. However, even though legislative documents are a form of government communication and, thus, should fall within the *Plain Writing Act*, the rigid structure and formal language of legislative documents tends to make them less attractive than a government website or press release for the average layperson.

As noted, military documents are limited by types, and the structures of these forms are different from the format and purpose of legislative documents. Turn again to Army Regulation 25-50; it permits only "three forms of correspondence authorized for use within the Army: a letter, a memorandum, and a message."[144] The military letter "consists of three major parts: the heading, body (text), and closing."[145] It conveys formal messages through correspondence addressed to the following entities:

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[142] *Plain Writing Act of 2010*, HR 946 111th Cong., 2nd session, Sec. 2, https://www.gpo.gov/fdsys/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf.

[143] Ibid., Sec. 3 (3).

[144] U.S. Army Chief of Staff, *Preparing and Managing Correspondence*, 1.

[145] Ibid., 32.

President or Vice President of the United States, members of the White House staff, Members of Congress, Justices of the Supreme Court, heads of departments and agencies, State Governors, mayors, foreign government officials, and the public … [as well as] to individuals inside the department or agency when a personal tone is appropriate, for official personal correspondence by military and civilian personnel, and for letters of welcome, appreciation, commendation, and condolence.[146]

In addition to the quite limited purposes previously mentioned, the goal of letters, as Troyka and Hesse point out, may also be "to communicate plans, procedures, or purchases; share or ask information; request specific actions; or influence decisions."[147] Some of these goals, such as communicating plans and procedures and requesting specific actions, are similar to the goals of legislative documents. However, no instructions exist on how to write, for example, *procedures* in letters, so the letters' designs lie within the discretion of those who write them. Therefore, such unregulated designs are unlikely to be helpful in obtaining legislative drafting skills.

Similar to the letter, the military memorandum consists of a "heading, body, and closing."[148] Containing correspondence, the Army memorandum is meant for the following audiences to achieve specific goals:

[The memorandum] is sent outside the headquarters, command, installation, activities, units, or similarly identifiable organizational elements within DOD; for routine correspondence to Federal Government agencies outside DOD; for notification of personnel actions, military or civilian; for showing appreciation or commendation to DA Civilians and Soldiers; and for internal correspondence within the same headquarters, command, or similarly identifiable organizational elements.[149]

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[146] U.S. Army Chief of Staff, *Preparing and Managing Correspondence*, 1.

[147] Troyka and Hesse, *Handbook for Writers*, 793.

[148] U.S. Army Chief of Staff, *Preparing and Managing Correspondence*, 7.

[149] Ibid., 6.

Three specific memoranda with distinct objectives are listed in Army Regulation 25-50:

1. Memorandum of understanding (MOU) … [is used] to describe broad concepts of mutual understanding, goals, and plans shared by the parties when no transfer of funds for services is anticipated.[150]

2. Memorandum of agreement (MOA) … [is used] to establish and document common legal terms that establish a 'conditional agreement' where transfer of funds for services is anticipated. MOAs do not obligate funds, but establish the terms for future services.151

3. Memorandum for record … [is used] to show the authority or basis for an action taken … [and] to document informal meetings or telephone conversations when official business was conducted.[152]

Regarding the goals of memoranda, William A. McIntosh clarifies that "the memorandum is a flexible format that can serve virtually all the ends of a letter without being stuffy. Whether your aim is information or persuasion, the memorandum format will accommodate you. Use memoranda to answer questions, update information, make recommendations, report findings, obtain decisions, and record significant events."[153] None of the goals inherent in legislative documents can be found in memoranda, and therefore, knowledge and experience in writing memoranda cannot serve as a base for creating knowledge of and experience in writing legislative documents.

Military messages are not as formal as the previously described documents; as well, they have no prescribed structure. Army Regulation 25–50 sets the following goal for messages: "Use instant messaging as an alternate method to transfer organizational and individual information, facilitating communications with offices in multiple or distant locations."[154] Messages, which are often relatively informal and brief writings that are conveyed by emailing, phone texting, or instant messaging, are not only dissimilar to legislative drafting in structure and function but, it can argued, can cause officers to lose their formally learned writing skills.

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[150] Ibid., 8.

[151] U.S. Army Chief of Staff, *Preparing and Managing Correspondence*, 8–9.

[152]Ibid., 9.

[153] William A. McIntosh, *Guide to Effective Military Writing*, 3rd ed. (Mechanicsburg, PA: Stackpole Books, 2003), 84.

[154] U.S. Army Chief of Staff, *Preparing and Managing Correspondence*, 1.

Trent J. Lythgoe examines how extensive emailing is affecting officers' writing skills. He points out that:

> Email is contributing to the deterioration of writing skills.… The average Army officer may send scores of emails every day, [sic] few take the time to compose thoughtful, well-written messages … Unlike formal staff papers, there are no brevity, grammar, or correctness standards for emails. Many leaders do not demand well-written emails. The result is officers who practice poor writing day in and day out, which is arguably worse than not writing at all.[155]

The reason why messages contribute to bad writing stems from their ability to be exchanged between correspondents almost as frequently as face-to-face or phone conversations. The availability and usual brevity of messages make feedback nearly instantaneous. If messengers do not understand each other, they have the opportunity to ask at once for clarification. It often takes less time to explain something again than to think carefully about how to write it well on the first try. No such opportunity exists for legislative drafting.

Having discussed emails, this chapter would be remiss not to mention PowerPoint presentations, another modern technological achievement broadly used as a written and oral means of communication in the military, business world, and other areas as well. Use of PowerPoint has become so prevalent that the phrase "Death by PowerPoint" was coined, referring to its mind-numbing frequency and repetitious presentation. Unfortunately, by regularly creating PowerPoint slides, officers' overall writing skills are weakened, including those applicable to legislative drafting. After reviewing many studies, Lythgoe argues that "PowerPoint does not require officers to formulate complete ideas or to put those ideas together in a logical way. Instead, officers reduce their thoughts to 'bullet statements,' a phrase that is shorthand for incomplete sentences."[156]

In fact, the PowerPoint presentation's goal is not to represent complete sentences; its goal is to demonstrate for its audience key words representative of ideas, which those

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[155] Trent J. Lythgoe, **"**Flight Simulation for the Brain: Why Army Officers Must Write," *Military Review* 91*,* no. 6 (2011): 50. http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20111231_art011.pdf.

[156] Lythgoe, **"**Flight Simulation for the Brain," 50.

who make presentations explain orally. Take, for example, a slide the from PowerPoint presentation *Elections and Computers: A Match Made in … Someplace?*, by Matt Bishop and others:

<center>What Should It Do?</center>

- Summary: replace technology used in election process with better technology

  - "Better" means that the technology improves some aspect of the election process

- Examples

  - Easier to program ballots than print ballots

  - Can handle multiple languages easily

  - Easier to tally than hand counting[157]

By itself, it is difficult to understand what the slide's creators are trying to convey. However, when watching a video presentation where one of the authors elaborates on this PowerPoint presentation, the words on the slide as well as the slide itself become understandable. Thus, the PowerPoint and its presentation are only complementary and hardly can be separated. What is not understandable with the PowerPoint slides alone can be explained by the speaker. Although PowerPoint presentations today amount to a great part of officers' writing and reading, the knowledge and experience to make such presentations are not useful when drafting legislative documents.

2. Military Reading Assignments

What officers are assigned to write constitutes the vast majority of what they are assigned to read, namely letters, memoranda, messages, and PowerPoint slides, the latter of which are regularly forwarded ahead of time to potential audiences as "read aheads" and sent around afterward as stand-ins for presentation content. As was the case with writing such pieces, these readings do not develop officers' skills for writing legislative documents. The exceptions are military legislative documents that officers should read

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[157] Matt Bishop, Earl Barr, Dimitri DeFigueiredo, Mark Gondree, and Patrick Wheeler, "Elections and Computers: A Match Made in … Someplace?," Video library, NPS CISR, accessed January 20, 2016, 6, http://www.cisr.us/videos.html.

for knowing and properly exercising their military rights, responsibilities, and functions. For example Navy officers are required to know United States Navy Regulations (1990) "issued in accordance with the provisions of Title 10, United States Code, Section 6011, for the government of all persons in the Department of the Navy."[158] As well, they have to be familiar with Standard Organization and Regulations of the U. S. Navy, the purpose of which is "to issue regulations and guidance governing the conduct of all members of the U.S. Navy."[159] The number of legal documents regulating military service is huge. To read them is a useful occupation for understanding what a legislative document should look like, its structure and style, and potential objectives and content. Because officers are not taught to write legislative documents, reading them is an important way to create knowledge and experience pertaining to legislative drafting. Still, officers could benefit from instruction on how to analyze the legislative documents they read.

C.   EVERYDAY WRITING AND READING

This section examines writing and reading that military officers perform in their ordinary lives. It finds that the knowledge and experience from these writing and reading activities do not translate into knowledge and experience needed for writing legislative documents.

1.   Everyday Writing

Along with academic and military writing assignments, officers perform various kinds of paperwork while carrying out their rights and responsibilities as citizens, members of communities and social groups, and just as individuals. However, this paperwork also does not develop officers' skills to write legislative documents. The vast majority of it is simply too different in format, structure, content, and purpose.

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[158] Department of the Navy, *United States Navy Regulations (1990)*, issued September 14, 1990, Official U.S. Marine Corps website, http://www.marines.mil/Portals/59/Publications/United%20States%20Navy%20Regulations.pdf.

[159] Vice Chief of Naval Operations, *Standard Organization and Regulations of the U. S. Navy*. Opnav Instruction 3120.32C. Washington, DC: Vice Chief of Naval Operations, April 11, 1994. http://www.public.navy.mil/surfor/Documents/3120_32C_CHANGE_7.pdf.

Communication between an officer and federal or state agencies, insurance companies, service providers, online shops, and other entities where the written word is necessary usually happens by filling in online or paper forms in which entities pose questions and may simultaneously propose a set of expected answers from which to choose. Officers, then, click on or select the right answers from a drop-down list. For example, when completing Accident Report Form SF91, for an automobile accident, one can even "indicate on th[e] diagram how the accident happened."[160] So, there may be no need to describe the accident in written words—with complete and accurate sentences. If something must be clarified, officers may avail themselves of the agency's chat function, designed in a briefly worded email or instant messaging format, to receive the necessary information from clerks within seconds. As the name "chat function" implies, these exchanges are intended to be informal and conversational, neither of which is appropriate for legislative text. To take another case, one of the elements of critical thinking, namely evaluation, often is communicated today by completing various appraisal forms where officers simply put marks against listed criteria under "excellent," "good," and other grades.

Hand-written or carefully typed post letters between business acquaintances, citizens and their representatives, relatives, and friends are relatively rare today. When I was in the United States fifteen years ago, I wrote long letters to my family and friends in Ukraine; doing so, I made my mind work on how best to put my thoughts on paper. Now, I use Skype software to speak with them in real time. Officers who serve abroad or far from their homes often do the same. As McIntosh says, "writing … [is] the last resort";[161] people, including officers, use writing only in cases when other easier forms of communication are unavailable. Thus, for most people, writing that goes beyond professional and educational needs has been reduced by new technologies to clicking buttons against already formulated ideas or has been supplanted by other means that offer easier and faster communication.

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[160] U.S. General Services Administration, Accident Report Form SF91, accessed January 20, 2016, 2, http://www.gsa.gov/portal/mediaId/182923/fileName/SF91.action.

[161] McIntosh, *Guide to Effective Military Writing*, 22.

2.   Everyday Reading

Everyday reading can be divided into advertisements, news, literary work, and non-military legislation. Officers can use very little knowledge and experience taken from everyday reading to develop their legislative drafting skills. This reading differs from legislative documents by genre, sentence structure, word choice, and tone. The plain language that is preferred for legislative drafting is often considered boring when compared to everyday reading, which aims to entertain the reader. Thus, even though everyday reading may contribute new words to officer's vocabulary, many of these words are not suitable for legislative drafting. According to Troyka and Hesse, the tone of everyday text can be serious, respectful, friendly, humorous, slanted, sarcastic, or angry.[162] A quick perusal of one's local library reveals additional readings, usually books but also magazines, that are meant to scare, arouse, teach, or be playful. While only a serious and neutral tone is appropriate for legislative documents, most everyday reading prefers other tones and modes to draw in and entertain readers—or to sell them something.

Advertisements are the first stream of everyday officers' reading and are not applicable to legislative drafting. Advertisements are encountered consciously and unconsciously from websites and emails in the form of banners, pop-up windows, and placement in the middle of articles; and from mail-boxes in the form of brochures, newspapers, and other printed outputs. Jana Lapsanska points out, "advertising has become the part and parcel of present-day life. From everywhere around us, advertisements of diverse types attack our privacy. In spite of it, there is an attractive power, which is able to manipulate the consumer; an invisible voice of advertisement advocates, encourages, asks, announces and deeply embeds into peoples' minds."[163] For example, I observe that advertising on web-sites uses provocative or emotion-evoking key words and images to make people become interested in what the advertisement promotes or tries to sell. If I take the invitation to look at the proposal in detail,

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[162] Troyka and Hesse, *Handbook for Writers,* 30.

[163] Jana Lapsanska, "The Language of Advertising with the Concentration on the Linguistic Means and the Analysis of Advertising Slogans," (Ph.D. diss., Comenius University, 2006), 11, http://diplomovka.sme.sk/zdroj/3091.pdf.

advertising uses persuasive, elaborate language describing its product. Lapsanska observes:

> To persuade people to buy the product is the main purpose of the advertising. Among such great competition, the producer wants to demonstrate the uniqueness of his product. He wants to differentiate it from the rest. He is trying to find new techniques of advertisement. Also, the advertisement texts must be more attractive and more unexpected. They must catch the attention of the audience and then identify the product. Copywriters create uncommon, surprising, interesting texts with catchy slogans or phrases. The reader or listener must give it some thought and the result is manipulation with him in order to buy the product.[164]

As well, Strunk and White aptly notice, "Today, the language of advertising enjoys an enormous circulation. With its deliberate infractions of grammatical rules and its crossbreeding of the parts of speech, it profoundly influences the tongues and pens of children and adults."[165]

News is the second stream of information that officers read every day. It informs them about facts, so it bears little in common with the functions of legislative documents and, therefore, does not contribute much to developing legislative drafting skills. William Parks gives the following structure for news articles:

1. The lead

2. Material that explains and amplifies the lead

3. Necessary background material

4. Secondary or less important material

5. Descending pyramids. Narrative

6. Transitions

7. Quotes

8. Ending[166]

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[164] Lapsanska, "The Language of Advertising," 26.

[165] Strunk and White, *Elements of Style*, 81–82.

[166] William Parks, "Basic News Writing," Ohlone College, accessed February 2, 2016, 7, http://www.ohlone.edu/people/bparks/docs/basicnewswriting.pdf.

According to Parks, the lead is the most important part of news articles with the purposes of attracting readers and providing the scope of what the story is about.[167] He also suggests that:

> Every news story must cover the 'Five W's:' Who, What, When, Where, Why and sometimes How and So What? You don't have to cover all these in the lead, obviously, but usually you will address one or two in the first graph. The rest should come soon. Make sure they are all covered somewhere in your story.[168]

Thus, the legislative document differs dramatically from news articles by purpose, structure, and content.

Literary work also performs poorly as a model for and teacher of legislative drafting. The Texas Education Agency gives insight into what elements the literary work includes, specifically:

- Characters (main characters central to the story and others less central)

- Plot (the sequence of events in a story that develops the author's basic idea)

- Conflict (opposite forces, either internal or external, which tie one incident to another and develop the plot)

- Setting (time and location in which a story takes place)

- Theme (lesson, moral, or central idea)[169]

These elements typically unveil themselves in a suspenseful or playful way, so the reader is led to eventually reach the story's climatic, emotional, or problem-solved ending. Such content is quite different from the content of the legislative document, which must introduce in strict order definitions, short title, statement of policy, the leading purpose, subordinate provisions, administrative provisions, and so on.

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[167] Ibid., 3.

[168] William Parks, "Basic News Writing," 1–2.

[169] Texas Education Agency, "STAAR Alternate Guidelines for Choosing Grade-Appropriate Texts for Assessment Purposes," accessed February 5, 2016, tea.texas.gov/WorkArea/DownloadAsset.aspx?id=2147502685.

The Agency also defines some main literary works as fictional and differentiates them by their length, format, content, and purpose:

- Fiction—works of prose shaped by the author's imagination, including realistic fiction, historical fiction, science fiction, and fantasy

- Novels—lengthy stories with multiple characters, plots, and subplots

- Short stories—brief stories that are less complicated than novels

- Poetry—rhythmic writing with imagery that typically evokes an emotional response from the reader

- Drama/Plays—stories written in verse or prose for theatrical performance; characters express emotion and conflict through dialogue and action

- Myths—legends or stories written about a supernatural being, ancestor, or hero which attempt to explain a belief or natural happening; based in part on historical events but still considered fictional

- Folk tales—stories based on beliefs that are unfounded and passed down through the generations originally by word of mouth

- Fables—stories that convey a message or moral which typically include animals that take on human characteristics, such as speech and mannerisms[170]

One can clearly recognize that purposes and elements of these literary works do not coincide with those for legislative documents. For starters, there are many sub-genres of fiction, but only a few for legislative documents such as policy manuals, standard operating procedures, and laws. Whereas the types of literary works described previously are often fictional, legislative documents are overwhelmingly practical and grounded in reality. As well, the significant part of the literary work is dialog between its characters. The legislative document does not contain such parts; its persons and entities say no words, and their behavior is prescribed, not described as in the literary work.

Moreover, to attract readers, literary works tend to use an emotional style that would be wholly inappropriate for legislative documents. As Susan Nami writes:

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[170] Texas Education Agency, "STAAR Alternate Guidelines for Choosing Grade-Appropriate Texts for Assessment Purposes."

Fiction and poetry are filled with descriptive language, since the purpose is not to inform but to entertain. Someone may read this type of writing to enjoy the beauty of the language and writing itself. Therefore, this style tends to use more adjectives and adverbs, as well as figurative language and imagery, to create detail that allows the reader to envision the scenery and events in their minds.[171]

Some who like reading grandiloquent language, including military officers, can consciously and unconsciously fill in their vocabularies with words and expressions of such language and consequently get into the habit of expressing their thoughts in an emotional style. As Strunk and White explain, the English language allows conveying the same thought by different styles. They concluded, "what was poetical and sensuous has become prosy and wooden; instead of the secret sounds of beauty, we are left with the simple crunch of mastication."[172] Thus, if there is an opportunity to express thoughts in one's preferred style, it can be inferred that an officer who likes to read an emotional style, might be tempted to introduce elements of this style—not entirely, but partly— when writing legislative documents.

For example, heroic novels are rife with expressions such as:

Great worries! The time of your glory has come. You are honored to attack the enemy at his very heart and defeat him. Go immediately!

However, if we strip out the atmospherics and remove lack of specificity from this dramatic passage, many questions arise: What and where is the heart of the enemy? Is the heart its headquarters because the heart is arguably the most important part of the body? Or, is it the location, its center? Or, even still, since the heart is responsible for circulation of blood that brings oxygen and nutrition to cells, may be the heart represents the enemy's logistical center? In legislative writing, it would be much better for "worries" and "heart" to receive the following simple order:

The 1st regiment, attack the enemy's Headquarters. Immediate.

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[171] Susan Nami, "What is Writing Style?" Study.com, accessed February 5, 2016, http://study.com/academy/lesson/what-is-writing-style-types-examples-quiz.html.

[172] Strunk and White, *Elements of Style*, 68.

Such wording and order are basic, just as was mentioned earlier a "crunch of mastication."[173] No writer or movie director would let such words enter a book or movie because they do not fire up the audience. When officers listen to and read highly emotional words, and then listen to and read them again, and then again and again, eventually elements of this highly descriptive and imprecise style may find their way into officers' work-related writing tasks. While this may be marginally acceptable in a memorandum lauding someone's sacrifices, it would produce poorly written legislative documents, indeed.

In sharp contrast to literary works, non-military legislation provides officers with insight into the structure and content of legislative documents. As citizens, officers should know civilian legislation and, while reading such legislation, they may gain some knowledge about the nature of laws. They may also intuit elements of the necessary style of writing from reading basic consumer product documentation. When buying and before using appliances, officers may read instructions about how to use these appliances. These instructions, which are characterized by simple language, chronological steps, and structure and style somewhat resembling legislative documents, can help officers understand how instructive texts are constituted. Additionally, officers sign many contracts and agreements with service providers, for example, while opening bank accounts, renting houses, and purchasing cars. Before signing these documents, we can assume some officers read these documents, which, in most cases, are more likely to structurally and substantially resemble legislative documents.

However, perhaps we are being overly generous in describing the due diligence performed by military officers as consumers. As Omri Ben-Shahar points out, "standard form contracts in consumer transactions are usually not read by consumers"[174] He says:

> Real people don't read standard form contracts. Reading is boring, incomprehensible, alienating, time consuming, but most of all pointless. We want the product, not the contract. Besides, lots of people bought the

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[173] Ibid.

[174] Omri Ben-Shahar, "The Myth of the Opportunity to Read in Contract Law," Working Paper No. 415, The University of Chicago, 1, http://home.uchicago.edu/omri/pdf/articles/The_Myth_Of_Opportunity_To_Read.pdf.

product or the service along with the same contract and seem happy enough, so we presume that there must be nothing particularly important buried in the contract terms.[175]

Besides, instead of reading civil legislation, officers have an opportunity to rely on the free aid of military legal advisers. According to the U.S. Code, officers are entitled to receive "legal assistance in connection with their personal civil legal affairs."[176] For example, the Navy requires its legal personnel to provide "legal assistance support to service members, their family member dependents, and other eligible beneficiaries."[177] Officers may easily receive professional legal assistance without carefully studying legal documents in the case of "car contracts … child custody, visitation, and support … consumer fraud … credit and debt collection … demobilization … divorce … [and] estate planning,"[178] and many other everyday issues. If there is an easy, low-risk way to reach the goal, most humans tend to use this way. It is not farfetched to infer that officers would turn to military legal personnel for advice, rather than scrutinizing tedious, boring documents themselves.

In sum, during their lives, officers perform a broad variety of writing and reading activities while obtaining their education, carrying out their military duties, and functioning as private citizens. This chapter examined these writing and reading activities in terms of how they could contribute to officers' knowledge and experience in legislative drafting. Findings reaffirmed my hypothesis that neither academic, nor military, nor everyday writing and reading activities can generate nearly enough knowledge and experience to allow officers to efficiently and effectively write legislative documents. There are two exceptions: first, officers read legal documents, which give them a notion of genre, structure, and legislation's goals; and, second, they write military documents using plain language that is also suitable for drafting legislative documents.

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[175] Ben-Shahar, "Myth of the Opportunity to Read in Contract Law," 2.

[176] 10 U.S.C. §1044 et seq.

[177] Judge Advocate General, *Navy Legal Assistance Practice Guide Checklists* (JAG Instruction 5801.3a), Washington, DC: Department of the Navy, May 23, 2012, 2, http://www.jag.navy.mil/library/instructions/LA_Practice_Guide_Checklists_(Final_29-May-12).pdf.

[178] Ibid., Enclosure (1) , 1,

However, officers benefit little from these exceptions for developing their legislative drafting skills.

As a result, officers may write and read a lot. They may become experts in many fields. The knowledge and experience obtained from writing and reading may spark officers' creativity in many directions. But, despite this wide-ranging intellectual progress, the development of officers' legislative drafting skills is not occurring. The problem of their poor legislative drafting still remains. The legislative document is so unique in its genre, structure, style, goals, and other features that no type of academic, military, and everyday writing and reading can be used as a pattern or springboard to write such documents.

While knowledge and experience in legislative drafting is an independent variable for skills in legislative drafting that can be considered as a dependent variable, the knowledge and experience in other writing and reading is neither an independent nor an intervening variable for effective legislative drafting. This inference is very important in that officials who care about preparing officers to carry out their duties—including to write instructions, manuals, and other legislative documents—should not rely on officers' previous knowledge and experience in academic, military, and everyday writing and reading. This knowledge and experience is inadequate for providing officers with the necessary skills, knowledge of, and experience in legislative drafting.

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IV. ENVIRONMENT

Strunk and White observe that "all writers, by the way they use the language, reveal something of their spirits, their habits, their capacities, and their biases."[179] The cradle where writers develop these qualities is the environment in which they live, study, and work. This chapter reflects on some of the common features in the officers' environment that negatively affect their ability to write legislative documents. The first impediment is audience. As the audience becomes semi-permanent and known to a writer, it begins dictating its own requirements for how papers should be written. As well, familiar audiences may become satisfied with imprecise writing because written communication between the audience and writer is usually reduced to familiar issues, allowing writers to make some omissions in logic and clarity that are compensated for by the audience's knowledge.

The second counterproductive environmental impact, at least while an officer is enrolled in academic programs and shortly after leaving the academic setting, is scholarly, because of such norms as paraphrasing and summarizing, pioneering, and observing paper length requirements. To avoid plagiarism by paraphrasing and summarizing, officers resort to, as Hacker and Sommers point out, "redundancies … empty or inflated phrases … needlessly complex structures."[180] To be pioneering in their papers, officers advance ideas that need discussion, critiques, and further development, while legislative documents should contain ideas have been already tested. As well, being in the habit of applying various techniques for extending the length of papers, officers should guard against applying this technique when they write legislative documents.

The next negative effect of the environment is reflected in the relationship between the officers and the documents they have written. It stands to reason that officers care more about the academic papers they have written, especially their published theses, than about their legislative documents, because their connection with academic papers is

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[179] Strunk and White, *Elements of Style*, 67.

[180] Hacker and Sommers, *Style Manual*, 4–5.

lasting. With legislative documents, this connection is broken once the document is submitted to another person to sign. Finally, the officers' cultural environment also affects their writing skills, because it informs officers' daily language, which can find its way into the writing of legislative drafts.

A.   AUDIENCE

In any environment—pre-academic, academic, or post-academic military— officers mostly know their readership: in schools, they write for teachers; at home, to relatives, friends, and other affiliates; at universities, to faculty members; in military service, to commanders, peers, and subordinates. As well, these addressers and addressees tend to know what is being written about because they routinely talk with and informally write each other about issues that become the subjects of more formal writing. When the audience reads, it fills in information gaps left by writers who are being efficient and respectful of others' time when they do not document assumed shared knowledge. A well-acquainted writer and reader may not even notice what is being left unsaid because it is not necessary for their mutual understanding. Unfortunately, in legislative documents, such gaps are tangible and can lead to serious misunderstanding of the document's provisions.

In the Russian film-comedy, *The Diamond Arm* (1969), directed by Leonid Gaidai, the following dialogue, held between a police chief and police officer, illustrates this type of communication well:

- I guess I have to... [policeman]

- Don't do it! … [police chief]

- So, I think it's worth... [policeman]

- It is not worth it! [police chief]

- Let me at least... [policeman]

- This is an interesting idea, try it! You are in charge—act! [police chief][181]

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[181] *The Diamond Arm* (1969), directed by Leonid Gaidai, translated by the author of this paper, Vothouse website, accessed January 11, 2016, http://www.vothouse.ru/films/20100914/brilliantovaya_ruka_text.html.

The point of the joke is that the working relationship between the chief and his subordinate is so close they understand each other without needing to articulate ideas explicitly. The same happens between officers and their professors. For example, if during a course on economics, an officer writes in an academic paper that the rise of unemployment was caused by the new policy of the Federal Reserve, this passage is likely to satisfy the professor without a detailed explanation of the mechanisms underlying the causal relationships because this account was a task from a previous assignment. There, the officer clarified that if the Federal Reserve lends out new printed money at high interest rates, investment in business becomes more expensive and risky, and companies often hold off on hiring, thus contributing to a rise in unemployment as mobile workers are not picked up. In the current paper, the professor is more likely to focus on how the student has addressed the new assignment's tasks. For non-economists, however, who are not involved in the academic process, the paper has substantial gaps; they do not understand the connection between the Federal Reserve printing new money, for instance, and the labor market; they need to find in the paper additional explanation, details, and even definitions of basic terminology. Only then, will the paper become available for these and other readers to understand its content.

In another manifestation of information gaps in written documents people with great knowledge communicating with others often forget that their audience does not have the same knowledge. Here, the two sides do not understand each other. For example, scholar Steven Pinker writes:

> The curse of knowledge is a major reason that good scholars write bad prose. It simply doesn't occur to them that their readers don't know what they know—that those readers haven't mastered the patois or can't divine the missing steps that seem too obvious to mention or have no way to visualize an event that to the writer is as clear as day. And so they don't bother to explain the jargon or spell out the logic or supply the necessary detail.[182]

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[182] Steven Pinker, "Why Academics Stink at Writing," Stevenpinker website, last modified September 26, 2014, http://stevenpinker.com/files/pinker/files/why_academics_stink_at_writing.pdf?m=1412010988.

This "curse of knowledge"[183] can make those who know a lot into bad readers as well as ineffective writers. They may read the same way they write, unconsciously guessing what is missing in the text. For hasty writers, such a reader is a piece of luck assuming that the reader is at least as expert in the field. If, however, the topic is less familiar, individuals become more involved in reading. Such persons need further explanations to understand the writing, or they may interpret it in their own way, assuming they understand it as the writer intended. For example, officers primarily write for their commander with whom they share quite a bit of common and field-specific knowledge. They view the purpose of a writing task as helping the commander understand the contents, assuming that anyone else who might read the document will have at least the same subject-matter expertise and fluency in jargon.

In addition to leaving information gaps, officers are likely to be writing instructions in a style or organization proffered by their commanders. Often, officers are tasked with drafting documents in their commanders' names. Ideally, this assignment should inspire a writer to take particular care with mechanics and style. In fact, however, such an assignment may put outsized importance on the commander's approval, narrowing the intended readership to one specific person. I give in this thesis introduction an example where an officer wrote a draft law for the minister. If he even thought about it, this officer assumed that if the minister was satisfied, he could believe that the work was done well. McIntosh, for example, teaches:

> The degree of success you have as a writer for someone else's signature will depend—and this point is critical—on how well you assume a persona that satisfies the intended signer's self-image. That means you must adopt a voice that portrays this person not necessarily the way he appears to you, but rather the way he thinks he appears … hold fast to this rule: "'I will write consciously using the voice and tone of the person whose signature will appear on my work.'"[184]

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[183] Pinker, "Why Academics Stink at Writing."

[184] McIntosh, *Guide to Effective Military Writing*, 10–11.

Following this rule, officers perhaps will not primarily consider how to prepare high-quality documents understandable to a broad audience, but just how to please their commanders.

However, legislative document audiences consist of more than a familiar commander. Normally, the audience is made up of those providing policy that legislative documents prescribe, for example, officials; those to whom the documents are addressed, namely, citizens; officers from diverse backgrounds and commands; current and future commanders; those who monitor how legislative document policy works in practice, often called watchdogs; and those having official power to interpret legislative documents, such as judges. Not all of these audiences read legislative documents while thinking about what the writer intended to say in the text. Most look in the document for their own benefit, from their own perspective, and with their own knowledge base. As Ruth Sullivan points out, "most citizens read legislation not to discover the law for its own sake but to try to make the law work for them…. Their goal is … to personalize it, even colonize it, by ascertaining how it optimally relates to their own interests, needs, circumstances, or preferences."[185] Self-interested readers are apt to make much of gaps in legislative drafting; they, like the familiar commander, may interpret vagueness, ambiguity, and other flaws of such text into meanings that fulfill their needs and may or may not comport with the intended meaning of the document.

Officers achieve writing goals—whether in academic or military settings—partly because of knowledge, context, and style preferences shared with their familiar audiences. Working in such narrowly cast environments, officers often forget or ignore other readers, known and potential, who are not their immediate audience. This approach to writing cannot be successfully applied to legislative documents. An officer must write legislative documents thinking not only of who commissions these documents and knows the subject matter but of many other reader categories as well. The officer must be aware of and fill in potential information gaps and structure documents in a way that will

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[185] Ruth Sullivan, "The Promise of Plain Language Drafting," *McGill Law Journal* 47 (2001): 103, accessed January 13, 2016, http://www.lawjournal.mcgill.ca/userfiles/other/5404598-47.1.Sullivan.pdf.

communicate most effectively with autonomous readers, often over an extended time period.

B.   ACADEMIC NORMS

This section examines three elements of academic norms: paraphrasing and summarizing, encouraging pioneering, and observing paper length requirements. The findings demonstrate that all three elements tend to diminish officers' legislative drafting skills.

1.   Avoiding Plagiarism by Paraphrasing and Summarizing

Paraphrasing and summarizing others' works are important elements of academic writing, but, by doing so, officers acquire habits that are unwelcome in legislative drafting. When officers write academic papers, they know that if plagiarism is found, they wrote in vain. Academic culture does not accept such a paper, and its author would be punished. For example, according to the Naval Postgraduate School Instruction 5370.4C (Honor Personnel and Procedure) "a student may be dis-enrolled, denied degree, or have a degree rescinded."[186] Thus, the majority of officers try to avoid plagiarism at any cost, and when there is an option to choose between eloquent writing with elements of plagiarism or grammatically incorrect writing without it, they should select the latter.

Hacker and Sommers define plagiarism, stating that "three different acts are considered plagiarism: (1) failing to cite quotations and borrowed ideas, (2) failing to enclose borrowed language in quotation marks, and (3) failing to put summaries and paraphrases in your own words."[187] Paraphrasing and summarizing another's ideas, concepts, data, words, and models, which also require citations, involve rewriting text somewhat differently from the original source while as accurately as possible retaining the original message. When paraphrasing, it is still plagiarism if officers "changed sentence structure but copied words" or "changed words but copied sentence

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[186] NPS Chief of Staff, *Academic Honor Code*. NPS Instruction 5370.4B, 010., Monterey, CA: Naval Postgraduate School Chief of Staff, May 14, 2013, Enclosure (2), 7, http://intranet.nps.edu/Code00/Instructions/IndexNew_page03.html.

[187] Hacker and Sommers, *Style Manual*, 233.

structure,"[188] or changed words and sentence structure but failed to cite the original source.[189] Becoming good at paraphrasing and summarizing takes time, practice, and guidance. Accuracy is important. The first step in both tasks is to read and understand the material, while the final step is to check one's own version against the original source for accuracy.[190] The task can be quite difficult for some individuals to meet these requirements with good writing. To add such factors as deadlines and elementary fatigue, these tasks can seem even more challenging.

Some officers are stymied when the text they need to paraphrase is already well written, and they believe they cannot rewrite it as well or better. To quote instead of paraphrasing and summarizing seems to offer a quick solution, but it is, at best, double-edged. For starters, the text that needs to be summarized may be much too long to quote; for instance, one can summarize the main argument of a 140-page book in 40 words, but one cannot place that 140-page document in quotes within a paper. In addition, without expressing the ideas of others in the officer's own words, his or her paper would look like a patchwork of other authors' exact words, leaving little space for analysis or original contributions.

So, paraphrasing and summarizing are necessary tasks for academic papers, yet there are risks involved. A passage already may have been paraphrased several times by others, also with good writing. Since a completed thought usually is one sentence, how many well-written sentences can be made about the same thought? The answer is likely many but not infinitely many, and every iteration introduces a chance for misrepresentation. Academia's solution to this dilemma is to follow the citations back to the original author's words and work from that text. This can be time-consuming. Officers may accurately compose sentences with rich, inflated vocabulary, especially for

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[188] Fowler and Aaron, *Little, Brown Handbook*, 653.

[189] "How to Cite Responsibly: Citing Responsibly in Chicago (Notes-Bibliography System)," Thesis Processing Office, Naval Postgraduate School, Official U.S. Navy website, accessed April 13, 2016, http://my.nps.edu/web/thesisprocessing/citation-guides.

[190] Sandra Leavitt and Greta Marlatt, *Paraphrasing and Quoting Like a Pro*, workshop slides (Monterey, CA: Naval Postgraduate School, April 7, 2016), slide 21. https://my.nps.edu/documents/104100045/105648721/2016.01.22+Paraphrasing+and+Quoting+-+slides.pdf/59383599-e185-4f2c-82ca-fa4508a54f2b.

professors for whom plain English is not a priority. While officers might meet perceived requirements of academic writing with such sentences, they do so at the cost of good writing habits, at least of good writing habits for legislative drafting.

Because academic writing is more tolerant of different styles, language, and other features of a text than is legislative drafting, multiple versions of paraphrased text, according to academic writing, can be still considered well written. To take an example, assume the first writer pens, "in order to avoid getting wet, one can use an umbrella." The second writer paraphrases this statement as "according to the first writer, one will remain dry if he or she resorts to an appliance called 'an umbrella.'" The third one states, "according to new research, people can protect themselves from rain by deploying 'an umbrella.'" The basic idea can be re-expressed in a short sentence: "Hold an open umbrella above your head to keep dry during rain." Yet, some officers may get carried away, writing "what is pouring from the sky is not so terrible and will not make one soaked with water droplets because new research proposes a special device in the shape of a large mushroom to cope with this problem." This sentence is not too bad in terms of writing up the findings of an experiment, perhaps, but it is wholly unacceptable for legislative drafting. This example demonstrates how the norm of paraphrasing can create opportunities for some officers to develop a habit of writing wordy, overly descriptive sentences under the fear of being accused of plagiarism or an incorrect perception that wordier language is more "academic."

2. Pioneering

In Chapter II we considered the prewriting stage of legislative drafting, which emphasizes the importance of the mindset of officers when they begin writing legislative documents. According to this stage, legislative drafting is not an arena in which to test new ideas and debate alternatives; instead, it uses commonplace ideas, values, and perceptions that ordinary people will understand. However, not being aware of the stage's requirements, officers may follow the norms of academic writing, which are more familiar to them. The latter requires officers to be progressive, encouraging them to put their own new ideas down on paper, to defend their positions, and examine alternatives.

The main goal of academic writing is "to share and build knowledge about a subject."[191] In school, an officer develops, usually through considerable effort, the skill of writing advanced thoughts in order to initiate discussion about them, and, as a result of such discussion, the ideas are further developed. This is the normal scientific process, and each academic paper in this process contributes to expanding knowledge. Additionally, those who first create ideas, become the ideas' authors and gain respect and often promotion in academic society. When they are academics, officers follow academic norms and write to be a part of these discussions, explorations, and discoveries.

In contrast, legislative documents are products of completed discussions. Only when policy is defined, can a legislative document be written to communicate and implement the policy. While legislation is discussed and then written, an academic paper is written and then discussed. For example, Arend Lijphart in his article "Consociational Democracy" proposes "instead of Anglo-American democracies" to use the term "centripetal" democracies and "instead of Continental European democracies" to use the term "centrifugal"[192] democracies. Had this author had the opportunity to write a legislative document on his subject, he would more likely have used in this document the terms centripetal and centrifugal democracies, rather than the more well-known concepts Anglo-American and Continental European democracies. Similarly, the Ukrainian Research Institute of Civil Protection put in the *Draft Code of Civil Protection of Ukraine* a pioneering definition and goals of the "Unified State System of Civil Protection,"[193] which then were excluded from the draft because of their disputable nature. Thus, academic culture requires students, including officers, to be thinking a step ahead of society with ideas that ordinary people are not interested in analyzing and debating. As a result of their academic training, officers may become too innovative, too questioning for the task of drafting legislation. Putting new ideas in legislation in order to test them, or laying out elements of debate that led to the policy, would cause great confusion and is unwelcome.

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[191] Fowler and Aaron, *Little, Brown Handbook*, 1.

[192] Arend Lijphart, "Consociational Democracy," *World Politics* 21, no. 2 (January 1969): 222, http://www.jstor.org/stable/2009820.

[193] Ukrainian Research Institute, *Draft Code of Civil Protection*, article 1 and 20.

3.   Adhering to Paper Length Requirement

In academic culture, written works are evaluated by their length or prescribed an acceptable length. Each type of academic paper has length requirements that motivate officers to acquire skills and habits to write up to the necessary volume. They can legitimately do so by including additional data, critiquing more alternative explanations, further defining or debating terms, or including a policy-relevance section. If some material is applicable but not necessary for an academic paper, this material is likely to be in the paper if the space limit allows. For instance, there is nothing wrong with an academic paper if along with one example of evidence, an officer gives two or three more examples, even though the first one is enough to support an argument. Extra examples are useful for an officer; they stretch the paper up to the necessary length, strengthen the argument with more evidence, and demonstrate the student's depth of knowledge. To stretch their writings or raise the odds that a complex or important point will be understood, officers may explain an idea twice using such conjunctive adverbs as *in other words* or *that is*. This method is even welcomed for officials, including officers. Richard Lauchman in his book, *Plain Language: A Handbook for Writers in the U.S. Federal Government,* encourages using these conjunctive adverbs in government practice saying, "these are terrific clarifying devices."[194]

Because academic culture, in part, evaluates papers by their length, officers may take this criterion seriously and extend it to legislative documents. In this thesis's introduction, I provided the example in which the officer believed that well-written, thorough law should be around 20–25 pages in length. McIntosh also complains that many "academicians use long words, long sentences, and long paragraphs. For them, that kind of writing becomes almost an art form unto itself…. They expect their readers to study what they write at some length."[195] In contrast, legislative documents do not require a specific length, and the profoundness of laws is not associated with their size. Instead, as the *Colorado Manual* prescribes, "the shorter a bill can be drafted, the

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[194] Richard Lauchman, *Plain Language: A Handbook for Writers in the U.S. Federal Government* (Rockville, MD: Lauchman Group, 2001), 75, http://www.lauchmangroup.com/PDFfiles/PLHandbook.PDF.

[195] McIntosh, *Guide to Effective Military Writing*, 97.

better."[196] Following this principle, professional drafters do not include in legislative documents material even if it is applicable to such documents but not necessary. As well, the tendency to explain ideas more than one time is a bad habit if used in legislative documents, since the repetition of the same legislative concept offers opportunities for misunderstanding and confusion as to the purpose of each instance.

C.   NOT MY PAPER

Considerable thought and writing sophistication are required in academic papers, at least compared to legislative documents, which may be more formulaic and purposefully simplistic in word choice. An academic paper as output reflects greatly on the author's critical thinking skills, communication abilities, intelligence, and self-expression. As officers submit their academic papers, they understand that they are solely responsible for the papers' content. The paper is personal because their personalities are inherently in it. This is reflected in their unique writing styles, which can, at times, allow others to identify the author of a nameless paper. Moreover, in most academic institutions, the paper is the author's intellectual property. All rights of further communicating what is written in the paper belong to the author, with others honoring this by citing properly. This creates a strong future connection between authors and their academic papers.

Such connections are not the case for the legislative document and its author. Authors do not submit their own name with or sign legislative documents; they prepare them for others who are authorized to sign, usually for their commanders. Thus, the quality of legislative documents may be reduced in an attempt to pass a draft through the stage of a commander signing. Once this stage has been successfully cleared, the legislative document gets its own life, having nothing more to do with its drafter. The document does not identify the drafter, and the drafter cannot construe the document and claim intellectual property rights on it. However good or bad the legislative document is, the drafters are neither blamed nor praised for their job. It is not their ideas that are now on paper. With this anonymity and lack of impact on one's career or self-esteem the

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[196] Office of Legislative Legal Services, *Colorado Drafting Manual*, 5–13.

legislative writing environment does not create incentives for officers to write high-quality legislative documents. Moreover, as McIntosh points out, in the military environment "the writer's ego"[197] is unwelcome, and officers must devote themselves to "the interest of efficient mission accomplishment"[198] that, in the case of drafting legislative documents, means the approval of the draft by a person who ordered it to be prepared and then signed this draft.

D.   LANGUAGE CULTURE

One often reads that movies, mass media, lifestyle, and many other elements of modern culture are influencing officers in ways that negatively impact their critical-thinking and writing abilities. Culture influences what officers read, watch, and listen to in order to maintain functionality in society. Characteristics of where they live, in urban or rural communities, and whether they are rich or poor, religious or not, and the like, define their society. We become so familiar with things common to our culture that we lose sight that "common knowledge" is circulated within this cultural surrounding, and outsiders likely do not share the same knowledge with us. As was the case with elements of audience, this dynamic can compel officers—and others—to be careless about providing complete information in their papers.

For example, I am from Ukraine, and, even though my English language abilities enable me to understand the words people are saying, I have observed many times while in U.S. officers' society, I do not understand what they are talking about. When I ask my friend what is said or meant, he answers that for understanding the discourse, I have to be familiar with specific TV shows or movies or to know about certain historic events. For example, to understand the words "Run, Forest, Run" in the context of the conversation, I needed to have watched the film of the same name. Being in a culture where most members know what "Run, Forest, Run" means, these officers make the incorrect assumption that everybody, even those from outside of this society, interprets these words

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[197] McIntosh, *Guide to Effective Military Writing*, 6.

[198] Ibid., 7.

in the same way. Thus, each culture fosters many expressions understandable by its members but not by outsiders.

Based on cultural experiences and expressions, officers develop a specific language. As James Berlin says:

> Language is a social phenomenon that is a product of a particular historical moment, our notions of the observing self, the communities in which the self functions, and the very structures of the material world are social constructions all specific to a particular time and culture. These social constructions are thus inscribed in the very language we are given to inhabit in responding to our experience.[199]

Culturally specific language is convenient to use because it saves time when communicating and creates a sense of shared bonds. However, over time officers begin thinking in this language, their active vocabulary is getting formed from this language, and they stop considering their usage of words as culturally specific. As Strunk and White point out, "[language is] a matter of ear…. The line between the fancy and the plain, between the atrocious and felicitous, is sometimes alarmingly fine."[200] As a result, such language can insensibly find its way into papers and documents officers write, especially in environments where they are encouraged to "own" their ideas and write in their own style.

In sum, I examined in this chapter four different environmental factors that could influence officers' legislative drafting skills: audience, academic norms, relationship between authors and their written works, and language culture. Findings demonstrate that these factors quite likely contribute to officers' developing writing habits that negatively affect their writing skills overall and their legislative drafting skills specifically.

In the previous chapter, I concluded that knowledge and experience in legislative drafting is an independent variable for legislative drafting skills, while the knowledge and experience in other writing and reading is not a variable for effective legislative drafting, except in quite limited ways. According to this current chapter's findings, legislative

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[199] Berlin, "Rhetoric and Ideology," 731.

[200] Strunk and White, *Elements of Style*, 77.

drafting skills have another independent variable—the environment that runs in parallel with the first one. Even for officers who have a sufficient level of knowledge and experience in legislative drafting, environmental influences diminish these skills. The negative environmental impact, though, may be less consequential than the lack of legislative drafting knowledge and experience. However, to ignore environmental factors may lead to similar negative consequences. Such inference brings an important implication: Loading officers with knowledge and experience about how to write legislative documents is not sufficient, unless information about the environment's role introduced in this chapter is included as a part of such knowledge and experience. Officers must be aware of latent writing habits and influences that interfere with the skills necessary to draft effective legislative documents. So armed, they are more likely to effectively control such habits and, thus, prevent their drafts from harmful influences.

V.   CONCLUSION

Working on the research question "why are military officers not able to write legislative acts efficiently if they have skills in academic writing?," I developed three hypotheses. First, I posited that the knowledge and experience of academic writing is different from the knowledge and experience of legislative drafting to such an extent that officers who master academic writing skills cannot simply apply these same skills to drafting legislative documents. Second, the knowledge and experience of academic writing alone, or together with other knowledge and experience of writing that officers obtain during their lives, cannot be used to construct new knowledge and experience directly applicable to drafting legislative documents. My third hypothesis was that the environment in which officers live, study, and work to a large degree negatively affects one's ability to efficiently and effectively draft the military legislation—instructions, regulations, rules, manuals, and the like—that is required during most officers' careers. All three hypotheses appear to hold true.

The first hypothesis, which casts doubt on officers' ability to write legislative documents after they are armed with the knowledge and experience of academic writing, is the most impactful. I found deep differences in the knowledge and experience needed for academic writing and legislative drafting. Yet, only academic writing is taught in most officers' programs. Thus, a lack of knowledge and experience directly related to legislative drafting is quite likely a key reason for officers' poor legislative writing skills.

Three main teaching approaches—traditional, genre, and process—were examined to understand the differences and similarities between these two kinds of writing. I presumed that the traditional approach, which is intended to give officers knowledge of proper use of grammar, punctuation, and mechanics, is sufficient for providing officers with basic knowledge suitable for both types of writing. It appears, however, that the specificity of legal sentences and many exceptions when using punctuation and mechanics in legislative drafting are so significant that even at a basic level officers need to be taught knowledge appropriate for writing legislative documents. The genre approach, which teaches the rules, standards, style, content, organization, and

length of various types of writing, revealed that teaching officers academic writing norms is fruitless for being proficient at legislative drafting, which has specific and unique requirements. Findings demonstrated extreme differences between the genres of these two kinds of writing; their structures and substance are not interchangeable.

The process approach demonstrated how writing was carried out in both arenas in three stages: prewriting, writing, and rewriting. I found that the prewriting stages of academic writing and legislative drafting are significantly different, and thus experience with the prewriting stage of academic writing does not supply officers with the ideas and knowledge necessary to begin writing legislative documents. Familiarity with the writing (initial drafting) stage of academic writing even makes legislative drafting more difficult because the units of academic writing are paragraphs, while legislative drafting prefers sections, and the two are not comparable. As well, most legal sentences are not similar to sentences in academic writing. In the rewriting (revision) stage, I found that academic revision a subset of the rewriting stage of legislative drafting. Thus, knowledge of the former is incomplete for generating legislative documents. Officers need to learn more about the requirements of this final stage to adequately complete legislative documents.

Working on my second hypothesis, I discovered its veracity by analyzing the lack of similarities and the depth of the differences between the knowledge and experience of academic writing and that of legislative drafting, as well as between legislative drafting and other kinds of writing. These differences are based on genre, goals, exceptions, and many other important features. An analogy familiar to many people will help clarify the essence of such differences: Someone who has the knowledge and experience of driving a car cannot necessarily drive a semi, freight-carrying truck without additional training or practice. However, drawing on knowledge and experience with the car, one is able to create new knowledge and experience that enables him or her to drive the truck at a basic level: braking, viewing, turning, watching speed and gas level, and the like. But what if instead of having knowledge and experience in driving a car, one has knowledge and experience riding a bicycle? Alas, such knowledge and experience is not sufficiently translatable to driving a semi. My examination demonstrates the same about academic

writing and legislative drafting: the former does not beget the latter, even with the help of other common types of writing.

I also found evidence supporting my third hypothesis, which introduces environment primarily as a negative force compelling officers to write worse in terms of legislative drafting. When I examined the relationship between writers and readers, I discovered that officers' writing outputs are often crafted with their commanders in mind, or, if officers are students, with their professors as the target audience. Commanders and professors have their own requirements for papers, which particularizes the writing. At the same time, the audiences unconsciously and consciously allow officers omissions in logic and clarity, because they know a substantial amount about what the writers want to say.

When I examined academic culture, I found that requirements to frequently paraphrase and summarize, produce innovation that is vetted through writing, and establish standards for paper length contribute—each differently—to producing poor-quality legislative documents. I found also that officers do not carry responsibility or ownership for legislative documents as they do for academic papers, which retain the author's name, become his or her intellectual property, and are a demonstration of his or her intellectual abilities. Lack of a sense of ownership with legislative documents logically translates into less care when writing them. My findings further demonstrate that officers' language is amenable to modification depending on the culture that surrounds them. Inevitably, the vocabulary of the culture crawls into texts they write.

Modern technological applications, such as email and PowerPoint, have become powerful cultural influences that deteriorate legislative drafting. According to the multiple studies and my own examination of outputs in such formats, these applications tend to worsen writing skills as at whole. Using email and PowerPoint, officers unlearn to construct sentences with complete thoughts. What is left unsaid in a message may be quickly complemented by the reply message. What is absent on a PowerPoint slide, the presenter adds orally. However, the lack of complete thoughts in legislative sentences cannot be filled in these ways and, therefore, causes wrong interpretation and application

of legislative documents. Thus, the digital age brings advantages and disadvantages for the written word, including legislative prose.

Drawing on my findings, I propose three recommendations to improve officers' legislative drafting skills. First, officers need to be specifically taught to write legislative documents. Academic writing courses do not equip them with the necessary knowledge and experience of legislative drafting. Nor can officers create legislative drafting skills based on their knowledge and experience with academic or other writing and reading. This is a signal for military universities that the creativity and skills gained through academic writing, which they provide for officers, does not translate when it comes to generating rules of legislative drafting. These rules are the result of long-honed development and are unlikely to be constructed while addressing every-day tasks.

Ideally, special legislative drafting courses can be established for officers, either while they are at universities or on active duty. When on active duty, officers can be forwarded to military education installations to attend such courses or specialists can arrive at military units and hold courses for all officers serving at the units. To make teaching less costly, instead of establishing legislative drafting courses, the norms and requirements of legislative drafting could be added to academic writing courses. Officers may learn simultaneously about both kinds of writing by employing the comparative method that I used, for example, in this thesis. Another way to reduce the cost of teaching is to focusing on teaching select officers. For example, it is possible to teach legislative drafting skills to just one or two officers for every military unit. Knowledge and experience fade if they are not repeated. Officers do not write instructions every day. For example, the Naval Postgraduate School issued 22 instructions in 2015 and 13 in the first quarter of 2016.[201] Thus, if each military unit has a prepared officer who is continually maintaining his or her drafting skills, this officer can write for those who are tasked to contribute to legislative documents. Moreover, using new technologies, such an officer located at one military unit may coordinate officers from several other units, wherever

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[201] NPS Instructions, NPS Intranet for NPS students, Faculty and Staff, official U.S. Navy website, accessed March 24, 2016, http://intranet.nps.edu/Code00/Instructions/IndexNew.html#1000.

they are located. To be workable, officers possessing this specialized writing expertise should have ways to translate this into promotion potential.

Second, during courses, I recommend making officers aware of the negative impact of the environment on their legislative drafting skills, so they will be on alert and better able to compensate for such factors. The analysis in Chapter IV of the thesis can be useful for helping officers become aware of the environment's many influences. Related checklists could be developed for use during the rewriting phase of legislative drafting.

Third, I recommend against a special military legislative-drafting manual for officers. My research revealed that officers can find the vast majority of necessary guidance today in many State drafting manuals, including those mentioned in this thesis. Usually, there is little time to study such manuals, because the task of writing legislative documents usually comes suddenly and with short deadlines, so knowledge and experience of legislative drafting is needed immediately. My earlier recommendation to train select officers for such tasks would help ensure a unit's ability to respond quickly.

For officers, academic writing skills are an important acquisition for performing their military jobs effectively, and hence universities teach officers these skills. However, another kind of writing skill—legislative drafting—is equally important for officers, because part of their jobs is the preparation of a wide range of impactful legislative documents. Yet, universities do not provide officers with these skills, and, to my knowledge, academic and training installations have not been asked to render such teaching. Perhaps it has been believed that academic writing is similar to legislative drafting to such a degree that there is no need to teach officers both types of writing. This study demonstrates the fallacy of this approach and explains why. Academic writing and legislative drafting are not interchangeable. Officers with sufficient academic writing skills still remain unprepared for writing legislative documents. In fact, poorly-written legislative documents are a huge problem. They are sources for miscommunication and misunderstanding that ultimately lead to errors and even damaging actions.

Legislative drafting is not merely another kind of writing. It is a powerful tool, enabling those who have mastered these skills to translate carefully considered ideas into

strict, tangible guidance ready for implementation. The better able people are to understand and correctly follow legislative guidance, the better a state will progress. This is especially true for democratic states where a fair number of citizens are likely informed about and engage with public administration. Military officers may be one of the most active, enlightened, and patriotic categories of the population; to have them sufficiently armed with legislative writing skills would be a significant achievement for any state. The United States, still the flagship of democracy and liberty to many in the world, should be among the first to avail itself of this new knowledge, especially given its emphasis on promoting rule of law and military professionalization on a global scale.

This study may serve as a starting point for bringing this aptitude to reality. Having discovered the roots of officers' poor legislative drafting and offering reasonable solutions to this problem, this study is a valuable source of necessary information for the proposed startup.

This research also explored a field that nobody has considered. Pioneering this topic, this thesis has laid a solid foundation for further exploration and created a trope for others wishing to continue addressing legislative drafting issues. Although this thesis addresses these issues in the context of national security and defense, the findings apply to legislative drafting in general and may be useful in other areas of political, social, and economic life.

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